

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X  
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment  
5 : No. 2415N/08  
6 -against- :  
7 HAROLD GOPAUL, : Sex Abuse 1  
8 :  
9 Defendant. : Huntley/Mapp  
10 : Hearings-----X

11 April 30, 2009

12 252 Old Country Road  
13 Mineola, New York

14 B E F O R E:

15 HONORABLE JAMES P. McCORMACK,  
16 Acting Supreme Court Justice

17 A P P E A R A N C E S:

18 HON. KATHLEEN M. RICE  
19 Nassau County District Attorney  
20 For the People  
21 BY: JAMIE JOHNSON, ESQ.,  
22 Assistant District Attorney  
23 of Counsel.

24 DONALD R. SCHECHTER, ESQ.  
25 Attorney for Defendant  
80-02 Kew Gardens Road - Suite 1030  
Kew Gardens, New York 11415

26 \* \* \*

27 WENDY SILAS  
28 Senior Court Reporter

Proceedings

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1                   THE CLERK: Case is on for hearing, People of  
2                   the State of New York against Harold Gopaul,  
3                   Indictment 2415N of 2008.

4                   Counsel?

5                   MS. JOHNSON: Good afternoon, Judge.

6                   For the People, Jamie Johnson.

7                   MR. SCHECHTER: On behalf of the defendant,  
8                   Harold Gopaul, Donald R. Schechter, 80-02 Kew Gardens  
9                   Road, Kew Gardens, New York.

10                  THE COURT: Good afternoon.

11                  This matter has been sent to me by  
12                  Judge Donnino for purposes of hearing and I think  
13                  ultimately trial.

14                  I see that as a result of the decision by  
15                  Judge Calabrese this is a Mapp/Huntley Hearing?

16                  MS. JOHNSON: Correct, Judge.

17                  THE COURT: Mr. Schechter, that's your  
18                  understanding as well.

19                  MR. SCHECHTER: Combined Mapp/Huntley, yes,  
20                  Judge.

21                  THE COURT: All right, now, People you  
22                  indicate that you have some witnesses, police  
23                  personnel, from New York City?

24                  MS. JOHNSON: Yes, Judge. The hearing for  
25                  the Huntley/Mapp issues involves two witnesses.

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1                   The first is Detective Schulman of the NYPD,  
2 he is here today.

3                   And, second, is a uniformed police officer,  
4 Officer Alfaro. She was unavailable for today. I do  
5 not anticipate, as it is now 3:15, finishing with  
6 Detective Schulman today.

7                   I did step outside to speak with him. There  
8 are some issues with having NYPD officers come here on  
9 their days off. He does have child care issues  
10 tomorrow, your Honor. I asked him if he would be  
11 available, come tomorrow, for continuation. He said  
12 due to personal child care issues he would not be.

13                  THE COURT: Who is this that we're referring  
14 to?

15                  MS. JOHNSON: Detective Schulman, who is here  
16 today.

17                  I did send a teletype already for tomorrow  
18 for the uniformed officer, so if we have to finish with  
19 Detective Schulman another day and go a little bit out  
20 of order and continue with the uniformed officer  
21 tomorrow, I anticipate being able to do that.

22                  I have not heard anything from the 105  
23 command that the uniform officer would be unable to  
24 come tomorrow. Last I heard she would be available and  
25 she has been teletyped for 9 o'clock tomorrow morning.

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1                   THE COURT: So there's two witnesses for the  
2 hearing?

3                   MS. JOHNSON: Yes.

4                   THE COURT: Detective Schulman and a --

5                   MS. JOHNSON: Officer Alfaro.

6                   THE COURT: And Schulman has an issue with  
7 regard to child care tomorrow and the other officer has  
8 been teletyped to be here for tomorrow.

9                   MS. JOHNSON: She's been teletyped for  
10 9 o'clock tomorrow and I haven't -- we confirmed that  
11 the 105 received the teletype. I haven't heard any  
12 problems or conflicts and this was as of this morning.

13                  THE COURT: Okay.

14                  MR. SCHECHTER: If it please the Court, there  
15 are a few issues I have of my own.

16                  Firstly, I understand that counsel is  
17 indicating that my client allegedly executed a consent  
18 to search document.

19                  I had made discovery application requesting  
20 any and all such information and I never received  
21 copies of consent to search whatsoever.

22                  As a matter of fact, in the discovery  
23 applications counsel claimed that the search was an  
24 open view, did not claim in the discovery materials  
25 that my client executed a consent to search.

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1                   If the Court will peruse the District  
2 Attorney's answer, I think it's devoid of any mention  
3 my client executed a consent to search form, unless I'm  
4 mistaken.

5                   That's the first initial issue, Judge.

6                   (Pause in the proceedings.)

7                   THE COURT: All right, how many consent forms  
8 are there?

9                   MS. JOHNSON: Two, Judge, one with regard to  
10 searching of the residence and one with regard to  
11 searching of the vehicle.

12                  So your Honor knows, today was the first time  
13 I had been provided that paperwork as it was with city  
14 detective's case jacket. So I did provide that in the  
15 Rosario material.

16                  MR. SCHECHTER: I don't think, really, that's  
17 an issue for a Rosario matter, I think that's a  
18 discovery matter, so I respectfully --

19                  THE COURT: Now that you have the consent  
20 form, is there some way in which you've been prejudiced  
21 by receiving it today as opposed to having received it  
22 at some other point?

23                  MR. SCHECHTER: Certainly, your Honor.

24                  That belies the People's bill of particulars.  
25 I respectfully submit if the People, in the bill of

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1                   particulars, allege that the issue at this hearing is  
2                   whether or not the officer acted and seized the  
3                   information -- seized the alleged evidence in plain  
4                   view, that was what was prepared for this hearing.

5                   As a matter of fact, I submit that's the  
6                   purpose of a bill of particulars; for the People to  
7                   specify the particulars of the case that we are dealing  
8                   with and that is how defense counsel prepares the case.

9                   Now, on the eve of the hearing, for the first  
10                  time, I am given these consent documents which I had  
11                  absolutely no knowledge of from the District Attorney  
12                  and I submit that she should be confined to the  
13                  parameters of the four corners of her bill of  
14                  particulars, which is what she sent me, which is that  
15                  the issue here is whether or not the items seized by  
16                  the officer, not this officer, another officer, a  
17                  female officer who will be testifying, I guess,  
18                  tomorrow, whether, in fact, that evidence was seized  
19                  because it was in open view.

20                  I direct your Honor's attention to counsel's  
21                  bill of particulars and her response to discovery,  
22                  namely Page 5.

23                  THE COURT: Page 5 of what?

24                  MR. SCHECHTER: Of affirmation in opposition  
25                  to defendant's omnibus motion dated February 5, 2009.

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1 All counsel spoke about was her opposition to the  
2 motion because standing was not alleged.

3 Then she says on Page 6, "In the alternative,  
4 the People submit that the seizure of the physical  
5 evidence from the car without a search warrant was  
6 justified because the property was in plain view of the  
7 officers as follows: Police Officer Celica Alfaro  
8 observed the defendant's vehicle and inside said  
9 vehicle the officer observed the meat clever/knife and  
10 a massager. Police Officer Alfaro recovered said items  
11 from the vehicle."

12 There is absolutely no mention or no setting  
13 forth here that the basis that she is claiming the  
14 legality of the search is a signed consent to search.  
15 There's nothing in her pleadings to say that, Judge,  
16 and that's the purpose of a bill of particulars.

17 Does the Court have --

18 THE COURT: I have your -- I have the  
19 People's response to the discovery demand, which I take  
20 it there was another attorney prior to yourself,  
21 Mr. Schechter?

22 MR. SCHECHTER: Your Honor, there was a prior  
23 attorney which made motions which were insufficient and  
24 I was given the right to make my own omnibus motions  
25 which I, in fact, did.

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1                   However, the response of the People  
2 replicates the same allocations concerning the bill of  
3 particulars as to the justification of the search.

4                   THE COURT: All right, so, People, there was  
5 a search of the defendant's vehicle?

6                   MR. SCHECHTER: And home.

7                   MS. JOHNSON: There was a search of the  
8 vehicle and a search of the home, which I believe -- as  
9 to notice, I believe that counsel was provided them  
10 from the Queens District Attorney's Office, Judge, and  
11 I believe a copy of the property vouchers were turned  
12 over in discovery to both attorneys.

13                  So I'm just looking for those now because I  
14 believe --

15                  MR. SCHECHTER: No, never got the vouchers  
16 and I was never given a justification for the search  
17 with respect to this.

18                  This is counsel's bill of particulars in  
19 Nassau County. Queens and Nassau are not contiguous.  
20 What the DA in Nassau -- in Queens does not bind with  
21 the District Attorney in Nassau.

22                  MS. JOHNSON: Since we are prior to the trial  
23 and start of any hearing, we would make a motion to  
24 amend our bill of particulars orally and in our  
25 continuing duty to disclose any property or anything

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1           under 240.20, we are not only relying upon the consent  
2           form, but we are also relying on the property that was  
3           recovered in plain view.

4           Obviously, you know, it's up to your Honor if  
5           counsel is going to be given the right to re-argue  
6           whether or not his client has standing, but, either  
7           way, we are prepared to litigate all aspects of not  
8           only the consent, but the plain view part of the  
9           search.

10           MR. SCHECHTER: People can't have it both  
11           ways, your Honor.

12           They said that they were ready. They claimed  
13           they were ready. They made this application telling  
14           the judge they are ready. As such, the bill of  
15           particulars becomes fixed.

16           There are time constraints on the defendant  
17           as well. The time constraints -- there are time  
18           constraints on the defendant as well.

19           THE COURT: I don't have your papers.  
20           There's a lot of papers in front of me between your  
21           papers, the prior attorney's papers, the People's  
22           responses.

23           As to whether or not you had demanded copies  
24           of any consent searches --

25           MR. SCHECHTER: Any what?

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1 THE COURT: Consent search forms?

2 MR. SCHECHTER: Your Honor, you're presuming  
3 I would know about them.

4 It's part of their duty to provide me that in  
5 discovery.

6 THE COURT: It gets back to my initial  
7 question.

8 How are you and your client prejudiced at  
9 this point since we're only conducting a pretrial  
10 hearing with regard to these suppression issues?

11 MR. SCHECHTER: Because, your Honor, we are  
12 required under the law to provide our motions within a  
13 certain period of time and the People --

14 THE COURT: I understand.

15 You've now been apprised of the consent  
16 searches, the manner in which these searches were  
17 conducted. You're now about to begin the hearings in  
18 this matter.

19 Could you articulate to me as to how you  
20 would be prejudiced or foreclosed from litigating the  
21 issue as to whether or not your client validly executed  
22 a consent to search for his vehicle or for his car?

23 What's the remedy?

24 What are you asking me to do?

25 MR. SCHECHTER: Preclude. I'm asking the

1                   Court to direct that the District Attorney proceed on  
2                   the basis of plain view; that, in fact, that the theory  
3                   that she proffered and the justification for the search  
4                   proffered in her bill of particulars is what she's  
5                   bound by.

6                   That's the purpose of a bill of particulars.  
7                   Otherwise, it would render a bill of particulars  
8                   virtually meaningless and I ask that the People be held  
9                   to the proof that they claimed that they had, namely --

10                  THE COURT: Could you show me your bill of  
11                   particulars?

12                  I am looking at your discovery demand, which  
13                  didn't ask for any of the items you're claiming you  
14                  want to have precluded now, or at least the consent  
15                  searches.

16                  MR. SCHECHTER: Let me get a copy of my  
17                  demand, Judge.

18                  Your Honor, the motions were made in response  
19                  to the People's representations with respect to how the  
20                  search occurred. They never, ever gave us any notice  
21                  that there was a consent form, never in any of the  
22                  VDFs, nothing.

23                  THE COURT: All right, so you've gotten the  
24                  hearing, you've now been apprised as to the manner in  
25                  which the property was recovered.

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1                   MR. SCHECHTER: And I'm respectfully asking  
2                   that the Court make a determination.

3                   THE COURT: Well, you first asked to have the  
4                   items precluded.

5                   Now it seems to be that you're acknowledging  
6                   that you didn't ask for those items in your demand.

7                   MR. SCHECHTER: Well, I'm asking for a  
8                   hearing --

9                   THE COURT: Now you're shifting your argument  
10                  to, well, now, because they didn't mention it in their  
11                  motion papers, that therefore they should be precluded  
12                  as well?

13                  MR. SCHECHTER: What I'm saying, your Honor,  
14                  is the District Attorney, in their response to my  
15                  motion papers, specified a theory, specified the basis,  
16                  the justification, for the search. They did that.  
17                  They did that *sua sponte*.

18                  As such, they proffered the theory that they  
19                  were proceeding under and that is an *open view* theory,  
20                  okay?

21                  Now, right before we start the hearing, they  
22                  say, "No, I'm changing the theory. Now I'm going to  
23                  claim it was consensual."

24                  I'm saying, of course, it's a surprise, but  
25                  not only is it a surprise, they posited what they did

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1       in a bill of particulars and I'm saying they're  
2       required to present the theory specified in the bill of  
3       particulars.

4                  That's my application, judge.

5                  THE COURT: All right, I'll reserve decision  
6       on your application at this time.

7                  Anything else we need to address?

8                  MR. SCHECHTER: Yes, Judge.

9                  I've provided counsel with a list of forms  
10      that I noticed was not included in the Rosario  
11      material.

12                 For example, there are prepared, to my  
13      understanding in the normal course of police arrests,  
14      documents that have not been provided and I will list  
15      them the same as I gave the District Attorney.

16                 One is an activity log.

17                 Two might be provided, I haven't had a chance  
18      to look through the documentation, is a complaint  
19      report. The document is PD 313-152. That's a  
20      complaint report.

21                 The other document I did not receive is a  
22      New York State standardized domestic incident report  
23      with the form numbers DCJS 3221 and a report of  
24      suspected child abuse PD 377-1544.

25                 He is a mandatory reporter. He was supposed

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1 to make those -- do those documents.

2 His report to his patrol supervisor, I did  
3 not get that.

4 The domestic report incident log, I did not  
5 get that either.

6 Now, I don't know if there was an on-line  
7 booking system arrest work sheet, but, if there was,  
8 I'm entitled to that.

9 And, lastly - I have asked for this on  
10 several occasions and it has been granted because it's  
11 required - the commanding officer of the precinct,  
12 under certain circumstances, makes a request for a  
13 recommendation for commendation which contains within  
14 that request the statements and comments of the  
15 arresting officer as to the incidents.

16 I am requesting that a copy of that  
17 recommendation for a commendation, if such form exists.

18 THE COURT: All right, Ms. Johnson?

19 MS. JOHNSON: Your Honor, with regards to  
20 most of those documents that counsel had requested, a  
21 lot of it is not Rosario material for hearing purposes.

22 Let me start -- I mean, the complaint report  
23 is a narrative of the detective's conversation with the  
24 victim.

25 It has nothing to do with the defendant's

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1 statement. It has nothing to do with any of the  
2 property. It has nothing to do with any conversations  
3 that a detective had with the defendant.

4 It's similar to our 32Bs here, except they  
5 don't do actual 32Bs in the city.

6 As to the domestic incident report, again,  
7 that is certainly Rosario for trial, but is not a  
8 written recorded statement about the detective's  
9 conversation with the defendant.

10 Same thing with the domestic report incident  
11 log, the report of suspected child abuse.

12 I have protective services reports here and  
13 I've gone through them. I'm happy to show your Honor  
14 what I have. Everything that is listed in this  
15 paperwork that is in the detective's case jacket is not  
16 about the substance of his testimony at this hearing.

17 What I've turned over is everything that the  
18 defendant (sic) has memorialized in regards to his  
19 contact with the defendant, his conversations with the  
20 defendant, nothing about his contact with the  
21 complainant as there is no Dunaway or probable cause  
22 aspect to the hearing.

23 But I'm happy -- if your Honor would like to  
24 review any of this in camera, I have it to review.

25 THE COURT: I'll take a look at the material

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1           in camera, Mr. Schechter.

2                         Whatever you want to explore for purposes of  
3                         cross-examination as to these documents, as to whether  
4                         or not they have some bearing or would be considered  
5                         Rosario for purposes of the hearing, I'll certainly  
6                         give you leeway to do that.

7                         MR. SCHECHTER: Thank you, Judge.

8                         THE COURT: All right, anything else?

9                         MR. SCHECHTER: Well, I have no problem with  
10                         the People beginning their direct examination, your  
11                         Honor.

12                         However, since, as -- it seems to be the law  
13                         and the inclination of most prosecutors, I have just  
14                         been given a pile of papers which are alleged to be  
15                         Rosario material.

16                         Therefore, I would like my cross-examination  
17                         of the detective to be reserved for when I have an  
18                         opportunity to peruse them, which would be, if not  
19                         tomorrow, then I guess Monday.

20                         MS. JOHNSON: Judge, considering the video is  
21                         20 minutes to a half hour, I don't think we're getting  
22                         there anyway.

23                         THE COURT: It will appear you'll get your  
24                         request.

25                         MR. SCHECHTER: Thank you, Judge.

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1 MS. JOHNSON: There were two packets turned  
2 over to the Court and counsel, one with a Rosario cover  
3 sheet and the other one is the grand jury minutes of  
4 the detective, so I just want to make counsel  
5 acknowledges receipt of both of those.

6 MR. SCHECHTER: Let me hear this again,  
7 please?

8 MS. JOHNSON: Other than the packet, there  
9 was a separate packet that was the detective's Queens  
10 County grand jury testimony.

11 I want to make sure you got both of them.

12 MR. SCHECHTER: I have the grand jury  
13 testimony regarding -- part of what I was given was  
14 crossed out, so I don't know what that relates to.

15 So with respect to the grand jury testimony,  
16 absent what was contained that was crossed out on one  
17 of the -- on one, two, three -- three pages, I was  
18 given what appears to be the grand jury testimony from  
19 Queens.

20 MS. JOHNSON: Your Honor, what's crossed out  
21 is colloquy between a question from the grand jury and  
22 the Queens ADA. All the testimony is there.

23 So if your Honor would like to see what was  
24 redacted, I have that for the Court as well.

25 MR. SCHECHTER: Your Honor, I've been doing

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1           this a long time. It's the first time I've ever seen  
2           colloquy in a grand jury redacted from grand jury  
3           minutes.

4           THE COURT: Can I ask you what we're talking  
5           about, because you people have been dealing with this  
6           case for the last umpteen months. I got it a half hour  
7           ago, so -- this is grand jury testimony of whom?

8           MS. JOHNSON: Detective Schulman.

9           THE COURT: In the Queens grand jury?

10          MS. JOHNSON: Yes, Judge.

11          That is an original marked-out copy, so you  
12          can actually see through the black ink what was written  
13          there. It's on the last couple of pages.

14          (Shown to Court.)

15          THE COURT: And this is what pertains to the  
16          detective's interactions with the complainant?

17          MS. JOHNSON: No, it's not his testimony.

18          It's a question posed by the grand jury to  
19          the prosecutor which the prosecutor then asked. The  
20          actual part redacted is a grand juror's testimony.

21          THE COURT: In other words, it's colloquy  
22          between the DA in Queens and the grand juror?

23          MS. JOHNSON: Correct.

24          THE COURT: All right, Mr. Schechter, that  
25          does seem to be the case.

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1                   MR. SCHECHTER: I understand that, your  
2 Honor.           However, I respectfully submit,  
3 notwithstanding that, I don't believe counsel has a  
4 right to redact any part of those grand jury minutes,  
5 regardless of what they are.

6                   If it's colloquy, I'm entitled to look at it.

7                   Maybe grand jury had a question with respect  
8 to the officer's appearance, what the officer said or  
9 what the law was. Maybe he or she was confused. There  
10 are a lot of issues there that counsel is blocking me  
11 from considering.

12                  I have never -- when I was in the District  
13 Attorney's Office I gave the grand jury testimony.  
14 It's what they're entitled to. I never redacted  
15 anything unless it dealt with matters that were going  
16 to be dealt with on trial and then I would give them a  
17 separate grand jury minutes at trial containing the  
18 whole grand jury minutes, but I've never seen them  
19 redacted like that.

20                  MS. JOHNSON: Judge, Judge Calabrese already  
21 reviewed the minutes, indicated that portions were not  
22 to be disclosed to defense attorney.

23                  As the prosecutor, I have an obligation to  
24 keep those matters secret that are not Rosario and  
25 that's exactly what I've done.

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Schulman - People - direct

20

1                   MR. SCHECHTER: I don't recall such a  
2 direction from Judge Calabrese. Certainly, it wasn't  
3 reduced to a writing.

4                   THE COURT: Well, it doesn't appear,  
5 Mr. Schechter, to be -- it's certainly not statements  
6 made by any witness that would testify in this case.

7                   It's clearly between a grand juror and the DA  
8 who, I assume, is Mr. Rosenblatt?

9                   MR. SCHECHTER: Yes.

10                  MS. JOHNSON: Yes, Judge.

11                  THE COURT: So I don't see any reason at this  
12 time to unredact it, if you will, so I'm going to leave  
13 it as such over your objection.

14                  MR. SCHECHTER: Thank you, Judge.

15                  All right, People, you want to call your  
16 first witness?

17                  MS. JOHNSON: Yes. Detective Leonard  
18 Schulman.

19 L E O N A R D S H U L M A N, a witness called on behalf of  
20 the People, having been first duly sworn by the clerk  
21 of the Court, was examined and testified under oath as  
22 follows:

23                  COURT OFFICER: For the record, state your  
24 name, spell your last name, shield number, rank and  
25 command?

ws

Schulman - People - direct

21

1                           THE WITNESS: Detective Leonard Schulman,  
2                           last name is, S-c-h-u-l-m-a-n, Shield 6387, assigned to  
3                           the 105 Precinct detective squad in Queens, New York of  
4                           the New York City Police Department.

5 DIRECT EXAMINATION

6 MS. JOHNSON:

7 Q. Good afternoon, detective.

8 A. Good afternoon.

9 Q. Detective, how long have you been employed by the  
10 New York City Police Department?

11 A. About 15 and a half years.

12 Q. How long have you been a detective?

13 A. Almost ten years.

14 Q. Can you take us through the assignments that  
15 you've worked at through your -- the course of your career?

16 A. Obviously, initially the Police Academy.

17 From there I was assigned as a patrol officer in  
18 the 105 Precinct in Queens, New York. I was then assigned  
19 to the -- a citywide anti-crime unit for about five years  
20 and for the last seven years I've been assigned as a  
21 detective in the 105 Precinct detective squad.

22 Q. What area of Queens County does the 105 cover?

23 A. It's southeast Queens. It covers many different  
24 communities. It ranges all the way from the Queens side of  
25 Floral Park, all the way down to Rosedale.

ws

Schulman - People - direct

22

1 Q. I'm going to direct your attention to June 23rd  
2 into the 4th of 2008.

3 Were you working on that day?

4 A. Yes, I was.

5 Q. Were you working as a detective in the 105?

6 A. Yes, I was.

7 Q. What was your tour of duty that day?

8 A. I believe I was probably working a 4:30 p.m. from  
9 the night of the 23rd to 1 o'clock in the morning the  
10 morning of the 24th.

11 MR. SCHECHTER: Objection. Not probably, I  
12 would like to know what the officer's tour of duty was,  
13 Judge.

14 THE COURT: All right, detective, is that  
15 your recollection as to --

16 THE WITNESS: Yes, your Honor.

17 THE COURT: The objection is overruled.

18 MR. SCHECHTER: Is this June 23rd?

19 THE COURT: Yes, into the early morning of  
20 June 24th.

21 MR. SCHECHTER: Your Honor, did I hear the  
22 hours.

23 I'm sorry.

24 THE COURT: 4:30 p.m. on the 23rd to 1 a.m.  
25 the morning of the 24th.

ws

Schulman - People - direct

23

1 Q. On June 23rd, 2008 during the course of your tour  
2 did there come a time when an investigation was assigned to  
3 you?

4 A. There did. I believe it was actually probably  
5 about 12:30 in the morning of the morning of the 24th.

6 MR. SCHECHTER: Your Honor, once again, if  
7 the officer says approximately I have no problem, but  
8 when he says probably, then he's guessing.

9 THE COURT: All right, let me make the  
10 following suggestion.

11 Detective, I notice you're looking at some  
12 paperwork that's there.

13 Do you need to look at that to refresh your  
14 recollection?

15 THE WITNESS: Only on a couple of minor  
16 things. I mean, we're talking almost a year ago.

17 THE COURT: If you're going to look at any  
18 paperwork, whether it's the DA or defense counsel,  
19 indicate you need to look at it and what it is you're  
20 looking at.

21 MR. SCHECHTER: Your Honor --

22 THE WITNESS: All right.

23 MR. SCHECHTER: Your Honor, I respectfully  
24 ask the officer be asked if he has to refresh his  
25 recollection then, if he does, we know he's testifying

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24

1 from a refreshed recollection.

2 THE COURT: I'll let you and Ms. Johnson  
3 figure out how you're going to ask that.

4 Go ahead, Ms. Johnson, do you want to re-ask  
5 that?

6 MS. JOHNSON: Yes.

7 Q. On June 23rd, 2008, during the course of your  
8 tour, did there come a time that you received an assignment?

9 A. Yes.

10 Q. And what was the nature of the investigation that  
11 you were assigned to on June 23rd of 2008?

12 A. On the early morning hours of the 24th, where I  
13 was still on duty from my tour, I was notified that there  
14 was a complainant in the 105 Precinct that was alleging that  
15 she was a victim of a crime involving her stepfather as a  
16 perpetrator and that it was of a sexual nature and that both  
17 that complainant and ACS were involved in the case and that  
18 an investigator was being asked to assist in the interviews.

19 THE COURT: Please lower the window?

20 Thank you.

21 Q. What was the name, not of the victim, of the  
22 subject of the investigation?

23 A. I learned that the subject in the investigation's  
24 name was Harold Gopaul.

25 Q. Can you tell us the circumstances of your first

ws

Schulman - People - direct

25

1 encounter with Harold Gopaul?

2 A. I was advised by a Sergeant O'Hagan of the  
3 105 Precinct, the desk officer, that he told me that  
4 Mr. Gopaul had come into the precinct and based on --  
5 Sergeant O'Hagan said to me based on his knowledge of this  
6 particular case, that he recognized that Mr. Gopaul was the  
7 subject of the investigation and he initiated to have  
8 Mr. Gopaul taken into custody and arrested downstairs in the  
9 precinct.

10 Q. When were you advised Mr. Gopaul came into the  
11 105 Precinct?

12 A. About 4:45 in the morning on the morning of the  
13 24th.

14 Q. What were you doing at approximately 4:45 in the  
15 morning on June 24th?

16 A. I was still speaking to the victim, Sana Awan.

17 THE COURT: All right, let me just step back  
18 for a minute.

19 Go back to you said Officer O'Hagan --

20 THE WITNESS: Sergeant O'Hagan.

21 THE COURT: Sergeant O'Hagan.

22 He's a sergeant where?

23 THE WITNESS: The 105 Precinct.

24 THE COURT: Which is your precinct?

25 THE WITNESS: Yes. My office is upstairs on

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1                   the second floor and the patrol desk is on the first  
2                   floor.

3                   THE COURT: And he tells you that the  
4                   defendant has come in to indicate that he is engaged in  
5                   what?

6                   Can you give us the time when this happens,  
7                   the date?

8                   THE WITNESS: I'm -- I think I understand  
9                   you're question.

10                  Sergeant O'Hagan --

11                  THE COURT: Just so you understand, I'm  
12                  trying to get a time context of when -- you say that  
13                  you get notified in the early morning hours of an  
14                  assignment concerning a possible investigation of  
15                  sexual abuse.

16                  THE WITNESS: That's correct.

17                  THE COURT: And that comes from O'Hagan?

18                  THE WITNESS: I get a call from a detective  
19                  at the detective bureau, Queens, alerting me there was  
20                  a situation downstairs in the precinct.

21                  THE COURT: In your own precinct?

22                  THE WITNESS: In my precinct.

23                  I then contacted the sergeant downstairs who  
24                  provided me with some additional information and  
25                  enabled me to then be able to speak to the victim and

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1                   the ACS worker that was in the building interviewing  
2                   the complainant.

3                   THE COURT: Now, the victim in the building  
4                   at the time?

5                   THE WITNESS: Yes.

6                   THE COURT: And where is the defendant at  
7                   that time?

8                   THE WITNESS: When I'm alerted?

9                   He's not in the building. He comes in a few  
10                  hours later on his own and he walks into the precinct  
11                  and says who he is and that he's there looking for his  
12                  daughter.

13                  THE COURT: Okay, go ahead.

14                  Q. And do you learn this information from Sergeant --  
15                  from the sergeant?

16                  A. Yes, I do.

17                  Q. And what's his last name?

18                  A. O'Hagan.

19                  Q. Where -- are you still with the victim when you  
20                  actually hear this information from Sergeant O'Hagan?

21                  A. I had stepped out from speaking to the victim. I  
22                  was alerted that the sergeant had something to tell me.

23                  I came out of interviewing the victim and I had a  
24                  conversation that Mr. Gopaul had come into the precinct  
25                  wearing an Ecolab uniform, which is the company he, at the

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1 time, we were told, he worked for. Sergeant O'Hagan had  
2 indicated that he had been informed of that information  
3 earlier so when he saw the Ecolab uniform and Mr. Gopaul  
4 came in and said whatever he said, that they recognized that  
5 he was going to be the subject in regards to the  
6 investigation that was going on at that moment.

7 Q. Did you learn from the sergeant what it was that  
8 the -- that Harold Gopaul was coming to the precinct for?

9 A. Sergeant O'Hagan told me that -- based on what he  
10 was telling me, that Mr. Gopaul was coming in and he was  
11 looking to report his daughter Sana Awan missing, that he  
12 didn't know where she was, and at that point in time once  
13 they knew who he was they had -- they took him into custody  
14 and arrested him.

15 Q. And do you see the person you referred to as  
16 Harold Gopaul in the courtroom?

17 A. Yes, I do.

18 Q. Can you point to that person and identify an item  
19 of clothing that they're wearing?

20 A. A dark-skinned male wearing, it looks like,  
21 possibly a blue striped suit with a red, blue-and-white-type  
22 tie at the table.

23 MS. JOHNSON: Your Honor, let the record  
24 indicate the witness has identified the defendant.

25 THE COURT: Yes.

ws

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1 Q. Where was the defendant when you came into your  
2 first contact with him?

3 A. He was in an interview room in my office where I  
4 had instructed one of the uniformed officers to bring him so  
5 I can speak to him.

6 Q. Can you describe for us what that interview room  
7 looks like?

8 A. It's -- there's a door leading into a room and the  
9 room is probably ten by eight. I would speculate as to the  
10 measurements, without never having measured it myself.

11 When you first walk in there is a chair in front  
12 of you, there's a table that's maybe two by three feet in  
13 front of the chair and then there's another chair on the  
14 other side of the table.

15 THE COURT: All right, what time,  
16 approximately when you meet him for the first time?

17 THE WITNESS: It's about 5:10 in the morning.

18 THE COURT: And this is in the --

19 THE WITNESS: Morning of June 24th.

20 THE COURT: In an interview room in the  
21 105 Squad.

22 THE WITNESS: That's correct, Judge.

23 Q. Are there any windows in that interview room?

24 A. There's a small window on the door, maybe 14 by 14  
25 or 12 by 12 right, you know, like eye level on the door.

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1 Q. Who was in the room with the defendant when you  
2 first got there?

3 A. He was in there by himself. And the door had been  
4 secured from the outside and I opened the door and walked  
5 in.

6 Q. Who was outside of the door?

7 A. I don't recall specifically. I don't want to  
8 speculate. It would have been whoever the sergeant had sent  
9 Mr. Gopaul up with.

10 MR. SCHECHTER: Objection as to what was  
11 probable.

12 THE COURT: Yes, don't guess. If you don't  
13 know just tell us.

14 THE WITNESS: Yes, I don't know specifically.

15 Q. Was it a police officer or civilian?

16 A. Police officer.

17 Q. What was the defendant doing inside that room when  
18 you first entered?

19 A. He was sitting in a chair at a table.

20 Q. Was he handcuffed?

21 A. No.

22 Q. Where were his handcuffs, if you know?

23 A. Pardon me?

24 Q. Where were his handcuffs if you know?

25 A. I don't know.

ws

Schulman - People - direct

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1 Q. Where was your gun when you entered the room?

2 A. It was locked up outside in my office.

3 Q. When had you locked your gun up?

4 A. When I was first apprised that Mr. Gopaul had been  
5 taken into custody and was going to be brought up to be  
6 interviewed in my office.

7 Q. Was the defendant sitting or standing when you  
8 came -- when you went into the interview room?

9 A. Sitting.

10 Q. Was he sleeping?

11 A. No.

12 MR. SCHECHTER: Objection to the leading.

13 Q. What was he doing?

14 A. He was awake and conscious and he was just sitting  
15 at the table.

16 Q. Where did you go upon entering the interview room?

17 A. I sat at the first chair on the opposite side of  
18 the table of Mr. Gopaul facing him.

19 THE COURT: Okay, let me just interrupt you.

20 Could I just see both counsel?

21 (Discussion held at the bench, off the  
22 record.)

23 (Pause in the proceedings.)

24 THE COURT: All right, Ms. Johnson, whenever  
25 you're ready.

ws

Schulman - People - direct

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1 Q. What did you say to defendant when you entered the  
2 interview room?

3 A. I introduced myself, something to the effect of,  
4 "I'm Detective Schulman. I'm conducting an investigation.  
5 Before I can speak to you about the investigation I need to  
6 read you what's called Miranda warnings before I can proceed  
7 with having any other conversation with you."

8 Q. What was the defendant's response to you, if any  
9 response?

10 A. I don't know initially that he said anything. I  
11 think he might have just nodded his head in an okay-type  
12 motion.

13 I then went on to -- you know, I had a pre-printed  
14 Miranda warning form that I went on to -- you know, I  
15 explained to him, "I'm going to read you these questions. I  
16 need a clear and concise answer, yes or no, if you  
17 understand what I'm reading to you."

18 He said okay.

19 I read him the first question of the Miranda  
20 warning.

21 Mr. Gopaul acknowledged that his answer was yes,  
22 that he understood.

23 I proceeded -- I mean, should -- I proceeded  
24 likewise for all six questions on the Miranda form and  
25 Mr. Gopaul's responses to each question was yes, he

ws

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1 understood.

2 Q. What language were you having this conversation  
3 in?

4 A. In English.

5 Q. And what language were the defendant's responses  
6 in?

7 A. In English.

8 MS. JOHNSON: I'm going to ask that this be  
9 marked as People's Exhibit Number 1 for identification,  
10 please?

11 THE COURT: People's 1.

12 (People's Exhibit 1 marked for  
13 identification.)

14 MS. JOHNSON: May I have that shown to the  
15 witness, please?

16 (Shown to witness.)

17 Q. Detective Schulman, if you could take a look at  
18 People's 1 for identification?

19 Do you recognize that document?

20 A. Yes, I do.

21 Q. What do you recognize that to be?

22 A. It's a photocopy of the Miranda warning sheet that  
23 was used and read to Mr. Gopaul and prepared on the morning  
24 of June 24th of 2008.

25 Q. How is it that you know that it was the form that

ws

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1 was prepared with regards to this case?

2 A. The spots on the form that were prepared by me are  
3 in my handwriting. I was present when Mr. Gopaul signed it  
4 and I affixed my own signature as well.

5 Q. Is that a fair and accurate copy of the original?

6 A. Yes, it is.

7 MR. SCHECHTER: May I have a voir dire?

8 THE COURT: Well, could you wait until she  
9 offers it?

10 MR. SCHECHTER: Yes, Judge.

11 MS. JOHNSON: I would now offer what's been  
12 marked as People's 1 for identification into evidence  
13 for purposes of the hearing.

14 THE COURT: You want a voir dire,  
15 Mr. Schechter?

16 MR. SCHECHTER: Yes, Judge. I jumped the gun  
17 a little bit.

18 VOIR DIRE EXAMINATION

19 BY MR. SCHECHTER:

20 Q. Detective Schulman, where is the original of this  
21 document?

22 A. In my case folder.

23 Q. May I see it, please?

24 THE COURT: Yeah, if you have it.

25 THE WITNESS: Should I leave it in the folder

ws

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1 or take it out?

2 THE COURT: Can you take it out without  
3 having papers fly all over the place?

4 THE WITNESS: I'll do my best.

5 (Shown to counsel.)

6 Q. Now, officer, how many of these documents do you  
7 have with you when you go into the room to speak to an  
8 accused?

9 A. Just one.

10 Q. And when -- where did this document come from?

11 A. Can you be more specific?

12 Q. Yes, where did you get this document from?

13 A. There's a file drawer in my office where there is  
14 assorted documents that we might need on any given day.

15 Q. And all those documents are the same?

16 A. Depending which drawer you look at.

17 Q. All the Miranda warning documents are the same?

18 A. To my knowledge, yes.

19 Q. They're in your drawer, correct?

20 A. Pardon me?

21 Q. They're in your drawer?

22 A. It's not my drawer, it's an office drawer.

23 Q. Office drawer, I see.

24 When you took this document out, was this document  
25 blank or did it have any writing on it?

ws

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1 A. It was blank.

2 Q. And who put the notation of 0510 on the top right  
3 of the document?

4 A. When I sat down with Mr. Gopaul I did.

5 Q. So that wasn't there when you got the document?

6 A. No.

7 Q. Were there anything -- was there anything else  
8 written on this document when you came into the room?

9 A. Other than the typed pre-printed information, no.

10 MR. SCHECHTER: Judge, I'm finished with voir  
11 dire.

12 THE COURT: Okay, any objection?

13 MR. SCHECHTER: Not for purposes of the  
14 hearing.

15 THE COURT: All right, People's 1 to be  
16 received in evidence.

17 (People's Exhibit 1 received in evidence.)

18 DIRECT EXAMINATION CONT'D

19 BY MS. JOHNSON:

20 Q. Detective Schulman, can you please read for us how  
21 you read the defendant his Miranda warnings on June 24th,  
22 2008?

23 A. Well, as I was just describing, I initially wrote  
24 0510 as to note the time that I was starting to read them.

25 I then said, "You have the right to remain silent

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1 and refuse to answer questions. Do you understand?"

2 Mr. Gopaul clearly stated yes, that he understood.

3 "Anything you do say may be used against you in a  
4 court of law. Do you understand?"

5 Mr. Gopaul replied yes.

6 "You have the right to consult an attorney before  
7 speaking to the police and to have an attorney present  
8 during any questioning, now or in the future. Do you  
9 understand?"

10 Mr. Gopaul responded yes.

11 If I could just backtrack, as Mr. Gopaul was  
12 responding yes to each question I was writing his answer  
13 down at each line before I proceeded to the next question.

14 THE COURT: So the yes that appears after  
15 each question is your handwriting?

16 THE WITNESS: That is correct.

17 Q. And whose initials appear next to yes?

18 A. Mr. Gopaul's.

19 Q. And who wrote those initials down?

20 A. Mr. Gopaul, after the complete -- should I  
21 continue reading all six questions or no?

22 Q. Yes, please.

23 A. As I was saying, I read Question 1. I asked, "Do  
24 you understand?"

25 Mr. Gopaul replied yes. I wrote yes in my

ws

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1 handwriting.

2 I read Question 2 and, again, after he responded  
3 yes I wrote yes.

4 And I think I was up to Question 4, is that  
5 accurate?

6 Q. Yes.

7 A. Okay, "If you cannot afford an attorney one will  
8 be provided for you without cost. Do you understand?"

9 Mr. Gopaul replied yes. I wrote the answer yes.

10 "If you do not have an attorney available you have  
11 the right to remain silent until you have had an opportunity  
12 to consult with one. Do you understand?"

13 Mr. Gopaul responded yes. I wrote the answer yes.

14 "Now that I have advised you of your rights are  
15 you willing to answer questions?"

16 Mr. Gopaul answered yes and I wrote the answer  
17 yes.

18 Q. And after you marked yes who was it that initialed  
19 after each question?

20 A. Well, I then said to Mr. Gopaul, "I would like you  
21 to read each question yourself, make sure you understand  
22 what I read to you and affirm that the yes answers you gave  
23 to me are still your answers to these questions."

24 Q. Did you hand him the piece of paper?

25 A. I handed him the piece of paper, took it and

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1 looked at it, read each question and he said to me that, "My  
2 yes answers to each question are still correct."

3 I asked Mr. Gopaul, "If you would, please place  
4 your initials next to each yes answer you responded to me  
5 and also if you would print and sign your name on the lower  
6 portion of the form to indicate that you understand these  
7 rights."

8 He did, he did in each place, printed and signed  
9 his name on the back, handed it back.

10 I signed and affixed my shield number and then I  
11 wrote the date and time that was complete.

12 Q. And is that the June 24th 2008 at 5:15 a.m.?

13 A. That is correct.

14 Q. Were any threats made to the defendant prior to  
15 him signing that Miranda warning sheet?

16 A. No.

17 Q. Were any promises made to him?

18 A. No.

19 Q. Where was your gun while those Miranda warnings  
20 were issued?

21 A. It was locked up outside in my office.

22 Q. At any time during the issuance of these Miranda  
23 warnings did defendant ask to speak to an attorney?

24 A. No.

25 Q. At any time during the issuance of these Miranda

ws

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1 warnings did defendant indicate he no longer wished to speak  
2 to you?

3 A. No, he did not.

4 Q. Was the defendant cooperative with you?

5 A. Yes.

6 Q. Did you actually -- did you personally observe him  
7 sign and print his name where it's marked defendant?

8 A. Yes, I did.

9 Q. Did he ever ask -- did he ever indicate to you he  
10 had any questions for you?

11 A. No, he did not.

12 Q. After the defendant signed the Miranda warning  
13 form what did you do next?

14 THE WITNESS: I'm just going to refer to my  
15 notes so I have the correct order of the next form.

16 THE COURT: Do you need to look at them to  
17 refresh your recollection?

18 THE WITNESS: I do, your Honor.

19 THE COURT: Could you please indicate what  
20 you're referring to?

21 THE WITNESS: Absolutely, your Honor.

22 Okay, I'm referring to a complaint follow-up  
23 report that I prepared.

24 THE COURT: Does it got a number?

25 THE WITNESS: It's labeled follow-up

ws

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1 Number 3.

2 THE COURT: Do you have that, Mr. Schechter?

3 MR. SCHECHTER: As I said, your Honor, I was  
4 just given these documents and I have not had a chance  
5 to review them.

6 If counsel could refer them to me, then it  
7 certainly will be helpful.

8 Q. Detective Schulman, are you referring to the  
9 complaint follow-up informational report unapproved under  
10 summary of investigation?

11 A. I'm referring to an approved copy.

12 Q. With a summary of investigation, Paragraph 1, on  
13 June 24th, 2008 at approximately 4:45 hours?

14 A. That would be the report that I'm referring to.

15 MS. JOHNSON: That would be in the Rosario  
16 material.

17 MR. SCHECHTER: I don't believe I have it,  
18 Judge.

19 MS. JOHNSON: Page --

20 MR. SCHECHTER: Can I see the report please?

21 MS. JOHNSON: Sure.

22 (Shown to counsel.)

23 MR. SCHECHTER: I don't have that. At least  
24 I don't see it.

25 If I could be given just one minute?

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1 A. I don't want to speak out of turn.

2 MS. JOHNSON: It's towards the end.

3 (Pause in the proceedings.)

4 THE WITNESS: Is it okay if I leave this  
5 here?

6 THE COURT: Yes.

7 Okay, Ms. Johnson, did you have a question?

8 MS. JOHNSON: Can I continue?

9 THE COURT: Yes.

10 Q. Detective Schulman, what happened after you issued  
11 the Miranda warnings to the defendant and he signed them?

12 MR. SCHECHTER: Your Honor, I'm a little  
13 confused. Counsel asked the officer a question about  
14 the complaint follow-up report and she said it's marked  
15 unapproved and the officer answered that, no, it's  
16 approved. I only got an unapproved copy so I don't  
17 know what the officer is referring to here.

18 THE COURT: All right.

19 THE WITNESS: Can I explain why that is, your  
20 Honor?

21 THE COURT: Yeah, could you?

22 THE WITNESS: And it's based on my  
23 understanding. The computer system that the Police  
24 Department was using at the time allows for us to,  
25 using the computer program, type our complaint

ws

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1 follow-up reports and then they're submitted to the  
2 supervisor for approval.

3 After the supervisor approves it it no longer  
4 shows the unapproved marking on it.

5 So I have the completed version which is  
6 going to be consistent with the unapproved one with the  
7 exception of the unapproved no longer appears.

8 THE COURT: Let me ask you this. Is it  
9 identical of the unapproved one.

10 MR. SCHECHTER: I don't have a copy of the --

11 THE COURT: Mr. Schechter, would you mind if  
12 I got some answers before you start interrupting me?

13 MR. SCHECHTER: I'm sorry and I do apologize.

14 THE COURT: Would it be identical to the  
15 unapproved?

16 THE WITNESS: The unapproved would no longer  
17 appear and the supervisor that approved this  
18 information would then be tagged in.

19 THE COURT: People, what I'm going to direct  
20 you to do is whatever he's referring to, make a copy of  
21 it before Mr. Schechter cross-examines the detective.

22 MS. JOHNSON: That's fine, your Honor.

23 MR. SCHECHTER: Thank you, your Honor.

24 Q. Detective Schulman, is the summary of the  
25 investigation in the unapproved the same as that of the

ws

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1 approved?

2 A. It is.

3 Q. And is that what you're refreshing your  
4 recollection with, the summary of the investigation?

5 A. Yes.

6 Q. Can you now tell us what happened after the  
7 defendant signed that Miranda form?

8 A. Okay, I then stated to Mr. Gopaul that before I  
9 could proceed that I would like to gather his consent to  
10 search his work vehicle that he was in possession of and his  
11 home.

12 I said, "In order for me to do that I'm going to  
13 read to you a consent form that I have in order to get your  
14 permission."

15 I then -- you know, while I was sitting in front  
16 of Mr. Gopaul I wrote his name in the blank on the consent  
17 search of the home form and I wrote in the home address and  
18 who he would be authorizing if he consented to this search.

19 I then --

20 Q. I'm sorry, just to interrupt you there, was this  
21 still all going on in the interview room?

22 A. Yes.

23 Q. Had anybody else come into the room at this point?

24 A. No, they had not.

25 Q. Was defendant still unhandcuffed?

ws

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1 A. Yes, he was.

2 Q. Were you still at the same desk with him?

3 A. Yes, I was.

4 Q. And was your weapon still secured?

5 A. Yes, it was.

6 Q. At that point had the defendant indicated he no  
7 longer wished to speak to you?

8 A. No, he had not.

9 Q. Did he ask any questions of you?

10 A. No, he had not.

11 Q. Did he ask to speak to an attorney?

12 A. No, he had not.

13 MS. JOHNSON: I'm going to ask that this be  
14 marked as People's Exhibit Number 2 for identification.

15 (People's Exhibit 2 marked for  
16 identification.)

17 (Shown to witness.)

18 MS. JOHNSON: If I could have that shown to  
19 the witness, please?

20 THE COURT: He's got it.

21 Q. Detective, if you could take a look at People's 2  
22 for identification?

23 Do you recognize that?

24 A. Yes, I do.

25 Q. What do you recognize that to be?

ws

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1           A. It is a photocopy of the consent search  
2 pre-printed form that I had filled in a couple of blanks and  
3 then read to Mr. Gopaul, to which he had given his consent  
4 to search his home.

5           Q. Is that the form you were just referring to prior  
6 to me marking that for identification purposes?

7           A. Yes, it is.

8           Q. And can you explain to us what the conversation  
9 was with the defendant prior to him signing this consent  
10 form?

11          A. I read to Mr. Gopaul the substance of the form  
12 which at that point, after I had filled in a couple of  
13 blanks, "That I, Harold Gopaul, having been requested to  
14 consent to a search of my home located at 242-10 89th  
15 Avenue, Bellerose, New York, 11426, and having been duly  
16 advised of my Constitutional rights to, A, refuse such  
17 consent; B, to require that a search warrant be obtained  
18 prior to any search; C, that if I do consent to a search,  
19 any evidence found as a result of such search can and will  
20 be used against me in any civil or criminal proceedings; D,  
21 that I may consult with an attorney of my choosing before or  
22 during the search; and, that, E, I may withdraw my consent  
23 to a search at any time prior to its conclusion.

24           I then read, "After having been advised of my  
25 Constitutional rights I hereby knowingly, intelligently and

ws

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1 voluntarily waive my above rights and consent to search. I  
2 authorize Detective Schulman or authorized representative of  
3 the NYPD to conduct a complete search of the above-described  
4 location, premise, residence/location apartment."

5 Q. And is People's 2 for identification a fair and  
6 accurate copy of the form you read to the defendant?

7 A. Yes, it is.

8 MS. JOHNSON: Your honor, I would ask that  
9 for hearing purposes People's Exhibit 2 be marked into  
10 evidence.

11 MR. SCHECHTER: May I see the original  
12 document, your Honor, before?

13 THE COURT: Yes.

14 MR. SCHECHTER: It might obviate the  
15 necessity for voir dire.

16 (Shown to counsel.)

17 THE COURT: Any objection?

18 MR. SCHECHTER: Not for the purposes of the  
19 hearing, your Honor.

20 THE COURT: All right, so without objection  
21 for the hearing, People's 2 will be received in  
22 evidence.

23 (People's Exhibit 2 received in evidence.)

24 (Shown to witness.)

25 Q. Detective Schulman, what you just read to us, was

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1 that how you read it to the detective in the interview room?

2 A. Yes, it was.

3 Q. And what was his response to you reading that  
4 consent search form?

5 A. Mr. Gopaul stated yes, he would consent.

6 I then said to him, "Well, again, I would like to  
7 you read this to yourself."

8 He read it to himself and then he signed his name  
9 and he put the date and time and our location on the bottom  
10 of the form and handed it back to me.

11 Q. Did you observe the defendant put his signature on  
12 that form?

13 A. Yes, I did.

14 Q. And who was it that actually wrote the location,  
15 the date and the time?

16 A. Mr. Gopaul.

17 Q. And by that are you indicating that the defendant  
18 wrote 5:20 a.m., June 24th, 2008, 105 detective squad?

19 A. Yes, I am.

20 Q. Did you observe him read this form?

21 A. Yes, I did.

22 Q. Did he have any questions for you after reading  
23 it?

24 A. He did not.

25 Q. Did he ask to speak to an attorney after he read

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1 it and before he signed it?

2 A. He did not.

3 Q. Were any threats made to him prior to signing it?

4 A. No, there were not.

5 Q. Were any promises made?

6 A. No.

7 Q. Had anybody entered or left the room during the  
8 time this consent form was read to the defendant?

9 A. No.

10 Q. And where was your weapon at that point?

11 A. It was still locked up outside in my office.

12 Q. Following the defendant's signing this consent  
13 form marked as People's 2, what was the next conversation  
14 you had with the defendant?

15 A. Well, after he signed it I signed it and then the  
16 next thing I did is I said to him that, as I had priorly  
17 (sic) said to him, I was going to read to him a consent to  
18 search his vehicle.

19 MS. JOHNSON: Your Honor, I'll ask this be  
20 marked as People's Exhibit 3 for identification.

21 (People's Exhibit 3 marked for  
22 identification.)

23 (Shown to witness.)

24 Q. Detective, if you could please take a look at what  
25 has been marked as People's Exhibit 3 for identification

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1       purposes?

2                     Do you recognize that?

3       A.   Yes, I do.

4       Q.   What do you recognize that to be?

5       A.   This is the pre-printed consent form that I used  
6       to ask Mr. Gopaul for consent to search the vehicle that he  
7       was the legal custodian of at the time.

8       Q.   How do you know that that's the one you used in  
9       this case with this defendant?

10      A.   The handwriting of the items that I filled in are  
11       in my handwriting, I witnessed when it was signed and I also  
12       affixed my own signature on the bottom of the form.

13      Q.   Is that a fair and accurate copy of the original  
14       form?

15      A.   Yes, it is.

16                  MS. JOHNSON: Your Honor, we would ask that  
17       this be marked as People's 3 in evidence for purposes  
18       of this hearing.

19                  THE COURT: You're getting the original right  
20       now, Mr. Schechter.

21                  MR. SCHECHTER: Thank you, Judge.

22                  (Shown to counsel.)

23                  MR. SCHECHTER: No objection for purposes of  
24       the hearing.

25                  THE COURT: Without objection, People's 3 in

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1 evidence.

2 (People's Exhibit 3 received in evidence.)

3 THE COURT: Okay, Ms. Johnson.

4 (Shown to witness.)

5 Q. Detective, if you could take a look at that  
6 document?

7 Could you tell us how it was that you read that  
8 document to Mr. Gopaul on June 24th, 2008?

9 A. While I was sitting with Mr. Gopaul I was filling  
10 in the top captions that would need to be filled in for me  
11 to read it to him.

12 After that was complete I then read, "I Harold  
13 Gopaul am the owner/legal custodian of a 2006 Dodge Ram  
14 bearing license plate number 22726JV and VIN number  
15 1D7HA16NX6J220067, which is currently located at side of the  
16 105 Precinct.

17 "I have been duly advised of my rights to: One,  
18 refuse such consent; two, require that a search warrant be  
19 obtained prior to any search; three, that if I do consent to  
20 a search, any evidence found as a result of such search can  
21 and will be used against me in any criminal proceeding;  
22 four, that I may withdraw my consent to search any time  
23 prior to its conclusion.

24 "I knowingly, intelligently and voluntarily waive  
25 my above rights and consent and authorize Detective Schulman

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1 or his duly authorized agent of the New York City Police  
2 Department to conduct said search."

3 Q. And who signed this document?

4 A. After Mr. Gopaul indicated that he would consent  
5 he again he read the form to himself and agreed that he  
6 would consent. He then affixed in his own handwriting, the  
7 date and time and he printed his name and he signed his name  
8 and then I signed my name below as witness.

9 Q. Where it says date June 24th, 2008, time 5:30  
10 a.m., is that your handwriting or the defendant's  
11 handwriting?

12 A. That is Mr. Gopaul's handwriting.

13 Q. And next to the word subject where it is a printed  
14 name of Harold Gopaul and then a signature, who marked that  
15 printed name?

16 A. Mr. Gopaul.

17 Q. And did you observe him sign that document?

18 A. Yes, I did.

19 Q. Prior to defendant signing this were any promises  
20 made to him?

21 A. No, there were not.

22 Q. Were there any threats made to him?

23 A. No.

24 Q. Any physical force used upon him?

25 A. No.

ws

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1 Q. Was he still unhandcuffed?

2 A. Yes, he was.

3 Q. Had anybody -- any member of law enforcement  
4 entered or left the room up until that point?

5 A. No.

6 Q. Did he indicate he wanted to speak to an attorney  
7 at the time?

8 A. No, he did not.

9 Q. Did he have any questions for you?

10 A. No, did he not.

11 Q. And he indicated orally prior to signing this that  
12 he wished to waive his rights and consent to this?

13 A. Yes.

14 Q. Did you observe him read over the documents?

15 A. Yes.

16 THE COURT: Detective, just to kind of put  
17 this -- put some context to this, are these forms being  
18 presented to him after you've now read him his Miranda  
19 warnings, as you've testified?

20 THE WITNESS: That's correct.

21 THE COURT: Is there any time that's on the  
22 forms or that you noted anywhere as to when these  
23 events are taking place at all?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: On the forms themselves?

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1                           THE WITNESS: Yes.

2                           Q. With regards to the -- I'm sorry, do you have both  
3 of the documents up there for you?

4                           A. Yes.

5                           Q. With regards to the consent search that's been  
6 marked into evidence of the home, that 5:20 a.m. time, is  
7 that the time that the consent was read or the time the  
8 defendant signed it?

9                           A. The time that he's signing it.

10                          Q. And on the consent form for the vehicle, the 5:30  
11 a.m., what time does that represent, that 5:30 time?

12                          A. That, again, represents the time that he is  
13 signing it.

14                          Q. And --

15                          A. Which he actually wrote in his own handwriting  
16 just prior to signing it.

17                          Q. And those were both signed after the Miranda  
18 warnings were issued?

19                          A. That is correct.

20                          Q. And after the defendant signed the Miranda form?

21                          A. That's correct.

22                          Q. After both of those consent forms were signed what  
23 did you do?

24                          A. At that moment I stepped out and took a break for  
25 a little while. I had to go back and speak to the victim

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1 and get some other information.

2 Q. Did there come a time when you came back into the  
3 interview room to speak with the defendant?

4 A. There did.

5 Q. Approximately what time was that?

6 THE WITNESS: Again, I'm going to refer to  
7 that same report, your Honor.

8 THE COURT: Okay.

9 A. It was approximately 6:20 on the morning of  
10 June 24th.

11 Q. What was the defendant doing at 6:20 when you went  
12 into the interview room?

13 A. He was sitting awake, and appeared coherent, in  
14 the same chair that he had been sitting in with his eyes  
15 open.

16 Q. Same interview room as before?

17 A. Same interview room.

18 Q. Was he handcuffed?

19 A. No, he was not.

20 Q. Was your weapon still secured?

21 A. Yes, it was.

22 Q. Was anybody else in the room?

23 A. No, they were not.

24 Q. What did you do when you went into the interview  
25 room?

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1           A. Okay, I went in and asked Mr. Gopaul if he knew  
2 why he was in custody and under arrest.

3                 And he stated that, you know, on Saturday, prior,  
4 he had an argument and he had to slap Sana.

5                 So I asked him if he wished to, you know, to make  
6 a written statement in regards to what had happened Saturday  
7 and he indicated yes.

8           Q. When you say Sana you're referring to Sana Awan,  
9 the complainant in this matter?

10          A. That's correct.

11          Q. Where was the victim while you were having this  
12 conversation with the defendant?

13          A. She was in another interview room in my office.

14          Q. What did the defendant say to you after you asked  
15 him if he would like to talk about what happened on that  
16 Saturday?

17          A. Well, he then --

18                 MR. SCHECHTER: Your Honor, I'm sorry to  
19 interrupt the witness, your Honor, but the witness has  
20 been continually reading from his documents. I'm going  
21 to object because instead of it being his testimony,  
22 he's reading from documents and they're not in  
23 evidence.

24                 THE COURT: There's times when I'm making my  
25 own notes and I may not see that myself.

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1                    Detective, if you're going to look at the  
2 documents just indicate you need to look at them and  
3 just tell Ms. Johnson and just identify -- I'm  
4 assuming, unless I hear from you differently, the  
5 document -- you're referring to the document that you  
6 have as approved, but our copies say unapproved?

7                    THE WITNESS: Yes.

8                    THE COURT: Is that what you're referring to?

9                    THE WITNESS: Sometimes I'm just looking  
10 down, I'm not actually look looking at it.

11                  THE COURT: Okay, if you're referring to any  
12 document just tell us you need to do that.

13                  THE WITNESS: Yes, your Honor.

14                  Q. What did the defendant say to you after you asked  
15 him if he would like to talk to you about what happened on  
16 Saturday?

17                  A. He made that initial comment that he had an  
18 argument with her on Saturday and slapped her.

19                  I asked him if he would like to make a written  
20 statement about that and he said yes. I then gave him a pad  
21 and a pen and he was allowed to write out a statement.

22                  Q. What did you say to him when you gave him the pad  
23 and the pen?

24                  A. Write down what happened, or something to that  
25 effect, very similar to that.

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1 Q. And you provided him with the pad and the pen?

2 A. That's correct.

3 Q. And what did defendant do with the pad and pen?

4 A. He wrote out a statement.

5 MS. JOHNSON: I'm going to ask this be marked  
6 as People's Exhibit 4 for identification.

7 THE COURT: People's 4.

8 (People's Exhibit 4 marked for  
9 identification.)

10 THE COURT: Okay, Ms. Johnson?

11 MR. SCHECHTER: Can I see the original?

12 THE COURT: Are you going to be offering this  
13 in evidence?

14 MS. JOHNSON: Yes, your Honor.

15 THE COURT: So why don't you give the  
16 original to my officer?

17 (Shown to counsel.)

18 MR. SCHECHTER: May I have a moment, your  
19 Honor?

20 THE COURT: Yes.

21 (Pause in the proceedings.)

22 MS. JOHNSON: Your Honor, there's another  
23 statement I'm going to be offering, so if we could just  
24 have the detective pull that out now.

25 THE COURT: Well, I'm looking at MY clock.

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1 Let's just deal with this one statement.

2 MS. JOHNSON: Okay.

3 (Pause in the proceedings.)

4 MR. SCHECHTER: Your Honor, I would just  
5 like to say parenthetically, the copy of that statement  
6 that was given to me does not contain a second page and  
7 leaves out at least three or four lines on the bottom.  
8 This is the first I've noticed the second page as well  
9 as the bottom of that first page.

10 THE COURT: You're talking about the second  
11 page?

12 MR. SCHECHTER: Of this statement.

13 THE COURT: It's a two-page statement, yes?

14 MR. SCHECHTER: Yes. I only have one page.

15 THE COURT: In terms of the Rosario material?

16 MR. SCHECHTER: In terms of my discovery  
17 material, Judge.

18 THE COURT: Okay. Well, let me ask you this,  
19 before we get to the parenthetical material, do you  
20 have any objection to this coming into evidence?

21 MR. SCHECHTER: Not for purposes of the  
22 hearing.

23 THE COURT: For purposes of the hearing.

24 MS. JOHNSON: We're talking about the

25 June 24th, 2008 statement first that was timed 6: --

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1 MR. SCHECHTER: 30.

2 MS. JOHNSON: -- 25 a.m.?

3 MR. SCHECHTER: Yes, that statement.

4 THE COURT: Detective, would you do me a  
5 favor, just so the record is clear, look at what's been  
6 marked People's 4 for identification and could you tell  
7 us what time that statement is?

8 THE WITNESS: 6:25 a.m. on June 24th of 2008.

9 THE COURT: And how many pages is it?

10 MS. JOHNSON: It is two pages.

11 THE WITNESS: It is two pages, your Honor.

12 THE COURT: So at this point I'm going to  
13 interrupt Ms. Johnson, we're going to break until  
14 tomorrow.

15 MS. JOHNSON: For the uniformed officer.

16 THE COURT: For the uniformed officer.

17 MR. SCHECHTER: What is the officer's  
18 commitments with respect to his return for purposes of  
19 completion of the record?

20 THE COURT: I'm going to get that in a  
21 minute.

22 Let me ask you this, detective, are you  
23 unavailable tomorrow?

24 THE WITNESS: I am -- your Honor, actually, I  
25 only got notified last minute last night about today

ws

1 and I didn't get home until 4 o'clock from working last  
2 time and then out of courtesy for the Court I made it a  
3 point of changing my schedule today, so I actually have  
4 my children in the morning tomorrow.

5 THE COURT: Can you be here Monday morning?

6 THE WITNESS: Again, I'll have my children.  
7 It will be a little difficult.

8 THE COURT: I don't mean to be difficult  
9 myself and I understand.

10 THE WITNESS: Is there a chance we can do  
11 Monday afternoon?

12 I want to work with the Court.

13 THE COURT: All right, what I'm going to do  
14 is plan on being here Monday, regardless. I'll let  
15 Ms. Johnson know as to whether or not I definitely need  
16 you here Monday morning or afternoon.

17 MR. SCHECHTER: May I have a sidebar when  
18 the officer is off the stand?

19 THE COURT: For now you are excused until  
20 Monday. Make sure you take your file with you.

21 MR. SCHECHTER: Maybe you could hold him for  
22 one brief second while I have a sidebar with the Court,  
23 please?

24 THE COURT: Yeah, why don't you just gather  
25 your stuff, detective, have a seat in the back of the

1 courtroom.

2 (Witness steps down.)

(Discussion held at the bench, off the record.)

5 THE COURT: Mr. Schechter, I'm going to ask  
6 your client some questions relative to this application  
7 for daily copy.

8 Mr. Gopaul, I'm showing you a document that I  
9 believe your attorney went over with you earlier. It  
10 appears to have your signature in there and it deals  
11 with certain financial matters regarding your request  
12 for minutes to be provided to your attorney on a daily  
13 basis.

14 Is that your signature that appears there?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And you went over this with your  
17 attorney before signing it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And everything that you -- all  
20 the answers that are contained in there are true?

21 THE DEFENDANT: Yes, your Honor.

22 MR. SCHECHTER: Just so that the record is  
23 clear and your Honor understands, your Honor, this  
24 document -- it's his wife -- he has a business, an  
25 extermination business, that's in his wife's name. He

1           is the worker for his company and paid a salary, but  
2           the wife is the owner of the company and the money that  
3           is alleged there in that document is money that is in  
4           the wife's name and the wife's bank accounts.

5           THE COURT: Okay, all right, so I've signed  
6           it. I'll direct my reporter to provide you with daily  
7           copy.

8           MR. SCHECHTER: Thank you, Judge.

9           THE COURT: Mr. Gopaul, listen to my clerk  
10          for a moment.

11          THE CLERK: Mr. Gopaul, you have to appear  
12          tomorrow morning.

13          If you fail to appear a warrant can be issued  
14          for your arrest, you will be subject to the charge of  
15          bail jumping and the case will proceed in your absence.

16          Do you understand?

17          THE DEFENDANT: Yes.

18          THE COURT: Detective, we need you to be here  
19          9:30 Monday.

20          THE WITNESS: Okay.

21          THE COURT: And, you know, I was told that  
22          this matter was ready to go. It's got to go from day  
23          to day. Everybody has certain scheduling orders that  
24          they have to follow, including myself, so we're going  
25          to need you here 9:30 on Monday, okay?

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(Proceedings adjourned to Friday, March 1st,  
2009 at 9:30 a.m.)

WS



1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X  
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment  
5 : No. 2415N/08  
6 -against- :  
7 HAROLD GOPAUL, : Sex Abuse 1  
8 :  
9 Defendant. : Huntley/Mapp  
10 -----X Hearings

11 May 1, 2009

12 9 252 Old Country Road  
13 Mineola, New York

14 B E F O R E:

15 12 HONORABLE JAMES P. McCORMACK,  
16 Acting Supreme Court Justice

17 14 A P P E A R A N C E S:

18 15 (As previously noted.)

19 \* \* \* \*

20 18 THE CLERK: The People against Harold Gopaul,  
21 19 Indictment 2415N of 2008

22 20 MS. JOHNSON: For the People, Jamie Johnson.

23 21 MR. SCHECHTER: On behalf of the defendant,  
24 22 Harold Gopaul, Donald R. Schechter, 80-02 Kew Gardens  
25 23 Road, Kew Gardens, New York.

24 I'm ready to proceed.

25 THE COURT: People?

1                   MS. JOHNSON: Your Honor, yesterday we had  
2                   sent a subpoena yesterday early morning for -- and, in  
3                   fact, it was sent also while I wasn't at work on  
4                   Wednesday for Police Officer Alfaro, A-l-f-a-r-o, to  
5                   appear for the hearing. We had sent one subpoena for  
6                   her to appear at the hearing yesterday and we sent  
7                   another one for her to appear today.

8                   I have spoken personally with police liaison  
9                   from the NYPD and I've spoken to police liaison from  
10                  Nassau County.

11                  Subpoenas were sent for Officer Alfaro for  
12                  yesterday. They were also sent for today. I confirmed  
13                  this morning at 9:30 in the morning with a sergeant at  
14                  the 105 Precinct that they did, in fact, receive an  
15                  appropriate and an accurate subpoena for  
16                  Police Officer Alfaro.

17                  However, the sergeant indicated to me that it  
18                  was what they call RDO, Officer Alfaro's regular day  
19                  off. They called her on her personal cell phone and  
20                  did attempt to notify her to be here not only  
21                  yesterday, but today.

22                  She had not responded to their calls or their  
23                  messages when they advised her that she would be need  
24                  ed in court.

25                  When I spoke to the sergeant this morning he

1           said that despite even contacting her, there may have  
2           been an issue with overtime through the city.

3                 Be that as it may, I asked about having her  
4           possibly for this afternoon and then definitely for  
5           Monday.

6                 He advised me her next regular scheduled tour  
7           is Tuesday. I told him I would be sending a subpoena  
8           either way for Monday for hearing and for Tuesday as  
9           well.

10                His response to me was that even if I send it  
11           and they receive it, just as they had with the other  
12           subpoena, most likely they would not be sending the  
13           officer until Tuesday, her regularly scheduled tour  
14           back.

15                They advised me they would notify her about  
16           Monday once we sent the subpoena and once they received  
17           it, but due to the fact that it is her scheduled day  
18           off if she does not personally respond to it and for  
19           overtime constraints they cannot promise me they would  
20           send her before Tuesday morning.

21                THE COURT: What does the New York City  
22           jurisdictions do with their cases when one of their  
23           officers is off?

24                Do they just refuse to acknowledge the  
25           subpoenas and not come to court or is it just because

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1 it's coming out of Nassau County?

2 MS. JOHNSON: I actually asked the sergeant  
3 what their procedures were for notification.

4 He said they require 24 hours notice, which  
5 we did give, but 24 hours notice from their last  
6 scheduled tour. So because she has not been at the  
7 precinct and she has been consistently on days off,  
8 they haven't seen her to actually give her the notice.

9 THE COURT: So when did she last work?

10 MS. JOHNSON: She wasn't working yesterday to  
11 receive the notice.

12 THE COURT: You said you sent a subpoena on  
13 Wednesday for yesterday.

14 MS. JOHNSON: It was sent Wednesday, your  
15 Honor. I was not at work on Wednesday, but police  
16 liaison in my office through my paralegal received it  
17 and the NYPD did receive it on Wednesday for Thursday.

18 So they have not been able to get in personal  
19 contact with her to advise her, since she hasn't  
20 been --

21 THE COURT: I have a hard time thinking that  
22 if the New York City Police Department needs to reach  
23 one of their members that they're unable to reach them.

24 MS. JOHNSON: And the sergeant advised me  
25 they contacted her on her cell phone. She has not

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1                 answered it and she has not responded.

2                         And they further indicated that other than  
3                         that, due to overtime constraints, they would not be  
4                         able to guarantee that they would, in fact, be able to  
5                         send her.

6                         But they did say either way they have not  
7                         been able to reach her.

8                         THE COURT: So what do you suggest?

9                         MS. JOHNSON: My suggestion to your Honor  
10                         is --

11                         THE COURT: Does the New York City Police  
12                         Department honor court orders any more or they don't  
13                         honor subpoenas?

14                         Did you ask them if that would be something  
15                         that they would recognize?

16                         MS. JOHNSON: I spoke to the sergeant who was  
17                         in charge of their scheduling and I asked him, I said,  
18                         can you continue to follow up with her?

19                         He said yes, he would give her a call, but at  
20                         this point whatever your Honor suggests -- I would  
21                         absolutely make another phone call, advise them that  
22                         the Court has requested her presence, not just the DA's  
23                         Office, that this is a continued hearing in a criminal  
24                         case.

25                         They've been aware of this, but at this point

ws

1 I'm at the whim of, unfortunately, the 105th Precinct  
2 and the New York City Police Department.

3 THE COURT: Mr. Schechter?

4 MR. SCHECHTER: If it please the Court, the  
5 105 Precinct had been informed earlier by Judge Donnino  
6 in a nice way to cooperate with my investigator so my  
7 investigator could get pictures of the room, the  
8 interrogation room, where my client was interrogated.

9 They, for lack of a better term, jerked my  
10 investigator around for the better part of a week  
11 claiming that the room could not be used because the  
12 room was in constant use. All we needed was three  
13 minutes just to snap photographs. They refused to  
14 cooperate.

15 Judge Donnino then made another call asking  
16 when this could happen and they did it in a nice way  
17 and just short of an order and finally last, I  
18 believe -- a few days ago my investigator was finally  
19 able to get access to that room called the box and got  
20 pictures.

21 They have been stonewalling and I think one  
22 of the reasons for stonewalling is a question of  
23 jurisdiction. The point of view of the city, and I've  
24 dealt with this for years already, New York City Police  
25 Department says taxpayers of New York City pay their

1 salary, that this is out of county, therefore they do  
2 not want to utilize the services of the New York City  
3 Police Department for out-of-county work and that is  
4 why they would not be cooperating.

5 If this were a New York City case I am pretty  
6 certain that the police officer, over time or not,  
7 would be here.

8 My question to your Honor is, what if we were  
9 on trial and we had a jury in the box and continuity --

10 THE COURT: That's my question.

11 I understand, Ms. Johnson, you're here on  
12 behalf of the District Attorney of this county,  
13 normally you're used to dealing with the Police  
14 Department for Nassau County, but that's, quite  
15 frankly, what my question is to you.

16 Would they -- have they indicated to you that  
17 if the officers are not working that they will not come  
18 to court even on matters that involve their own  
19 jurisdiction?

20 MS. JOHNSON: They have not indicated  
21 anything about that, your Honor.

22 What I would intend to do, then, is --  
23 obviously we know that these witnesses are going to be  
24 necessary for trial. I will advise the commanding  
25 officer of what the situation is and if I have to have

1                   something in writing from them that they're going to  
2                   send them to give to the Court, then that's what I'll  
3                   do, but nobody has indicated to me that because it's a  
4                   Nassau County case that that's not why they're sending  
5                   them.

6                   And, in fact, I've been in constant  
7                   communication with the Queen's DA and I know  
8                   overtime -- just as overtime is a problem out here,  
9                   it's no different in the city.

10                  THE COURT: I understand all of the  
11                  jurisdictions are under, you know, budgetary  
12                  constraints and I'm sure New York City is not immune to  
13                  it either.

14                  I'm just rather shocked that they would get  
15                  subpoenas two days in a row -- do they even give you,  
16                  if you will, a heads up to say don't expect this  
17                  officer to be here?

18                  MS. JOHNSON: In fact, yesterday when we were  
19                  at a bench conference at the hearing I advised the  
20                  Court that yesterday, while I was here doing the  
21                  hearing, my paralegal called the city to confirm that  
22                  they received it and they did and there were no  
23                  problems. I guess we had -- them receiving it and them  
24                  actually having the officer here are two different  
25                  things for the city.

1                   But we had no indication, no phone calls,  
2                   that there was any problem and, in fact, this morning  
3                   the sergeant confirmed with me that the teletype was  
4                   sent appropriately, it was received within the  
5                   appropriate amount of time, but just that they couldn't  
6                   reach out to her.

7                   THE COURT: All right, who is -- the sergeant  
8                   that you're referring to is the sergeant at the 105?

9                   MS. JOHNSON: He is a sergeant at the 105  
10                  that when I spoke to -- when I called the precinct I  
11                  asked who would be in charge of speaking to somebody in  
12                  regard to a subpoena for an officer that's supposed to  
13                  come no Nassau County. I didn't catch his last name,  
14                  but he was in charge of, I guess, the scheduling for  
15                  them.

16                  THE COURT: Okay, do you have a number and a  
17                  name that if my chambers staff should call I would be  
18                  able to do so?

19                  MS. JOHNSON: I have it on an e-mail in my  
20                  office, so I do have the number you would be able to  
21                  contact.

22                  THE COURT: All right, I'll try to see what I  
23                  can do.

24                  MR. SCHECHTER: I understand, your Honor.

25                  I'm going to respectfully ask, your Honor,

1           that henceforth, since it appears the New York City  
2           Police Department is not being cooperative here, that  
3           the Court so order every subpoena with respect to the  
4           New York City Police Department and make it a Court  
5           order because unless your Honor threatens these people  
6           with contempt, they're going to hold this court in  
7           contempt, which is what they're doing now.

8                 Now, I would normally be criticizing my  
9           adversary for not having seen this and done this for a  
10           week in advance.

11               However, counsel has been on trial up until  
12           Tuesday last and needed Wednesday to basically  
13           re-charge her batteries and still sent messages to her  
14           paralegal to take care of this while she wasn't here.  
15           So it wasn't as if there was a hiatus from her point of  
16           view in terms of bad faith. So I'm not claiming bad  
17           faith on the part of counsel.

18               However, because the New York City Police  
19           Department appears to be contumacious in this  
20           situation, I have a man here accused of a very serious  
21           crime, and because they seem to be flouting the  
22           subpoenas of the prosecutors of Nassau County, I don't  
23           see any other basis or any other means of compelling  
24           them to be here unless you threaten them with jail.  
25           There's no other way to do it.

1                           THE COURT: Before we go from A to Z,  
2                           Mr. Schechter and start throwing adjectives around like  
3                           contumacious and flouting Court orders, which they  
4                           haven't up until now other than the DA's subpoena, I  
5                           would like to speak to the people in New York City to  
6                           find out whether or not there is any sort of budgetary  
7                           issue that will keep on arising during the course of  
8                           this case and I'll deal with it as I think appropriate.

9                           MR. SCHECHTER: I appreciate the Court's  
10                          intercession in this matter.

11                          My only concern is I remember when I was a  
12                          prosecutor we didn't have it as bad as it is today, but  
13                          certainly in situations such as this I would ask the  
14                          Court to so order the subpoena and tell the precinct or  
15                          the location if this officer doesn't come here, and the  
16                          courts will do that, then they suffer the penalty of me  
17                          considering a sanction of contempt because the New York  
18                          City Police Department, as most police departments,  
19                          it's even worse in the federal government, of course,  
20                          but the New York City Police Department believes many  
21                          times that they are above the law and that they don't  
22                          have to obey the orders of the Court and I'm asking the  
23                          Court to do that.

24                          THE COURT: Mr. Schechter, your past  
25                          experience is of no moment to me and I'm not going to

1 sit here and get into a bashing session of the New York  
2 City Police Department because of your prior  
3 experiences, whether they're justified or not, and let  
4 me deal with it the way I think it's appropriate to  
5 deal with. I appreciate your suggestions, but at this  
6 point they're just suggestions.

7 MS. JOHNSON: Your Honor, one thing that the  
8 sergeant did say to me, I don't quite know what it  
9 means because I don't know what their lingo is, but I  
10 did ask him if the officer was notified and you spoke  
11 with her and then she failed to come to Nassau what  
12 would happen. He said she would be given a CD. I  
13 don't know what a CD means in NYPD terms, but obviously  
14 there would have been ramifications to the officer had  
15 she actually spoken to the precinct.

16 THE COURT: Let's just move on for a moment.

17 I take it that with respect to Schulman, I  
18 would ask you to be in contact with him today or this  
19 afternoon. I don't know whether he's working this  
20 morning. It sounded like he wasn't available this  
21 morning.

22 MS. JOHNSON: No, he's not working. I have  
23 his cell phone number and I --

24 THE COURT: I would ask you to be in contact  
25 with him, be here on Monday.

1                   My understanding is that Judge Donnino had  
2 indicated to you, the DA, that after the hearing he was  
3 going to give or had agreed to, if you will, a one or  
4 two-day period where the case was not going to be -- in  
5 other words, it wasn't going to go straight into trial.  
6 It was going to be a one or two-day period, I guess,  
7 for you to prepare, whatever.

8                   I think in light of what's going on you may  
9 have used your one or two-day period between today and  
10 Monday.

11                  So I would tell both of you to prepare that  
12 at the conclusion of the hearing, whether it's Tuesday  
13 or Wednesday morning, that we're going to be picking a  
14 jury by the afternoon.

15                  MR. SCHECHTER: Thank you, your Honor.

16                  One other suggestion, if I might.

17                  I think that the videotaped confession is  
18 something -- since the Court has no familiarity with  
19 this case whatsoever, the videotaped confession is  
20 about a half hour.

21                  Counsel, I don't believe, has done anything  
22 with respect to the Miranda warnings on the video  
23 confession.

24                  However, if we could somehow have a mechanism  
25 where that the predicate -- the predicates to the

1 introduction of that are done, perhaps we could allow  
2 the Court to see the videotape so we can get on with  
3 this.

4 Because, your Honor, the videotape has within  
5 it some of the things that I'm going to be talking  
6 about on cross-examination. I don't know if counsel  
7 has the ability today of getting any people here with  
8 respect to the video confession.

9 Maybe the District Attorney in Queens County  
10 can come out here and -- he was present on the video  
11 and I think he is -- was present, at least, if not  
12 administered the rights to my client on the video.

13 So if he can come here perhaps we could at  
14 least get that done?

15 MS. JOHNSON: He's on trial. I already tried  
16 that. ADA Rosenblatt actually was picking a jury  
17 yesterday and I was going to have him here as a backup.  
18 So he's actually on trial.

19 THE COURT: I thought you were only calling  
20 two witnesses.

21 MS. JOHNSON: I am.

22 Because what counsel was saying was instead  
23 of continuing with Detective Schulman for purposes of  
24 the video, I could have called the Queens ADA who  
25 actually is on the video, but I can't, he's on trial.

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1 I tried that already.

2 THE COURT: So you plan on calling the Queens  
3 DA at all for the purpose of the hearing?

4 MS. JOHNSON: No, not at all.

5 MR. SCHECHTER: There was two, not only Jared  
6 Rosenblatt, but there was another DA that --

7 MS. JOHNSON: I was going to do it if  
8 Detective Schulman was completely unavailable, but he's  
9 coming back.

10 THE COURT: Is Officer Schulman present in  
11 the videotape?

12 MS. JOHNSON: Yes, it's two ADAs the video  
13 person and the detective. So the detective is there  
14 throughout the whole video.

15 THE COURT: Mr. Schechter, what I ask you to  
16 do before you leave here today, give my clerk both your  
17 office phone and cell phone in the event that -- we're  
18 going to have Schulman here on Monday.

19 MS. JOHNSON: Correct.

20 THE COURT: Assume you're going to be here on  
21 Monday.

22 MR. SCHECHTER: If that's the case, I suppose  
23 we ready and pass until Monday rather than doing this  
24 torturous kind of --

25 THE COURT: There's nothing we can do.

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1                   The last bit of advice I'm going to give both  
2 of you is whatever pretrial issues you want me to  
3 decide prior to jury selection, you better get it to me  
4 in writing with whatever case law you feel is  
5 appropriate to back it up. I'm not going to have a  
6 whole day's worth of banter back and forth about oral  
7 applications because it sounded like that's what was  
8 going to start happening yesterday, even though we're  
9 only doing the hearing. You better get it to me in  
10 writing, you better have it backed up with case law,  
11 you better get it to my secretary a day or two ahead of  
12 time.

13                   MS. JOHNSON: I'll start working on that.

14                   MR. SCHECHTER: Yes, Judge.

15                   THE COURT: We'll see you -- you'll back here  
16 Monday morning at 9:30.

17                   MR. SCHECHTER: Yes, Judge.

18                   (Proceedings adjourned to Monday, May 4th,  
19 2009 at 9:30 a.m.)

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1 SUPREME COURT OF THE STATE OF NEW YORK.

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X  
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment  
5 -against- : No. 2415N/08  
6 HAROLD GOPAUL, :  
7 Defendant. : Sex Abuse 1  
-----X Hearings :  
: Huntley/Mapp

8 May 4, 2009

9 252 Old Country Road  
10 Mineola, New York

11 B E F O R E:

12 HONORABLE JAMES P. McCORMACK,  
13 Acting Supreme Court Justice

14 A P P E A R A N C E S:

15 (As Previously Noted)

16 \* \* \* \* \*

17  
18 THE CLERK: Continued hearing, People of the  
19 State of New York against Harold Gopaul,  
20 Indictment 2415N of 2008.

21 MS. JOHNSON: Good morning, Judge.

22 For the People, Jamie Johnson.

23 THE COURT: Mr. Schechter, do you want to put  
24 your appearance on the record?

25 MR. SCHECHTER: On behalf of Harold Gopaul,

1                   Donald R. Schechter, 80-02 Kew Gardens Road, Kew  
2                   Gardens, New York.

3                   Your Honor, I would like the record to  
4                   reflect I have made a motion in limine, a courtesy copy  
5                   which I gave to the Court. Since time is pressing I  
6                   had served the District Attorney myself in person with  
7                   her copy.

8                   It relates to what we were discussing  
9                   regarding the use of any pending charged materials,  
10                  namely the information or charges that my client is  
11                  charged with in Queens County.

12                  The Court of Appeals, in fact, proscribes  
13                  that conduct.

14                  I submitted my motion to the Court and, as I  
15                  said, my copies to the DA and that would include a  
16                  redaction of the confession which the People have  
17                  indicated they intend to use on direct examination.

18                  So those are the -- that is my motion in  
19                  limine.

20                  The Court had asked me for case support, case  
21                  material, and I have supplied the Court's request.

22                  THE COURT: I appreciate that. Thank you.

23                  MS. JOHNSON: Your Honor, I did receive a  
24                  copy of this.

25                  I will have a written response in response to

1                   his motion in limine along with any Molineaux by the  
2                   People. I'll have it filed with the clerk's office  
3                   today and I'll just fax over a courtesy copy to the  
4                   Court because I know it takes some time to get there.

5                   I did also provide, I gave it to your clerk,  
6                   a copy of the grand jury minutes. Your Honor had  
7                   requested a copy of those.

8                   THE COURT: Yes.

9                   MS. JOHNSON: And this morning I turned over  
10                  additional Rosario material. I provided a copy to the  
11                  Court as well as counsel.

12                  I haven't had a chance to put a cover on it  
13                  so let me, for the record -- the packet includes a  
14                  property clerk's invoice for a two-speed massager  
15                  white/gray, a property voucher for a white body  
16                  massager, Officer Alfaro's memo book, the actual date  
17                  of June 24th, 2008, along with the outside cover of the  
18                  memo book, the unapproved complaint report related to  
19                  the recovery of the property, prisoner movement slip,  
20                  the arrest paperwork from the NYPD, two pages, the  
21                  on-line booking system arrest work sheet, that's  
22                  several pages, some of them are double-sided, so I just  
23                  direct the Court's attention to that, the complaint  
24                  follow-up information system index sheet, the  
25                  detective's bureau investigation review work sheet,

1 and, your Honor, there was testimony regarding  
2 unapproved versus approved reports.

3 THE COURT: Yes.

4 MS. JOHNSON: The last three pages of this  
5 are identical to the unapproved. The only difference  
6 is that this is the approved version and I'll note what  
7 the difference is.

8 On the last page it indicates the  
9 supervisor's name, Sergeant Hanrahan, and the word  
10 unapproved is missing. Other than that, the contents  
11 of it is identical to what was provided last week.

12 THE COURT: And you've received that,  
13 Mr. Schechter?

14 MR. SCHECHTER: Your Honor, I haven't had an  
15 opportunity to peruse what she's given me nor to read  
16 it. I mean, I just got it in court today.

17 One other thing, your Honor. I submitted two  
18 subpoenas for the Court to sign. My investigator is  
19 waiting for those. I request that those be signed  
20 forthwith so I can get her out to serve them.

21 THE COURT: Right. Actually, I was going to  
22 go over that next.

23 MR. SCHECHTER: I believe, your Honor, those  
24 are ex parte applications. I don't think that -- since  
25 the District Attorney is able to serve her subpoenas

1 without notifying me --

2 THE COURT: I understand, but I do think that  
3 there may be matters that -- in these documents that  
4 may very well have some privilege or confidentiality  
5 that may attach to it.

6 So I'm going to sign the subpoenas, the only  
7 question -- the only direction I'm going to ask, and  
8 I'll have my law secretary just make a notation on the  
9 subpoena, that they get brought to my chambers so I can  
10 review them in camera.

11 MS. JOHNSON: Your Honor, can I -- I don't  
12 know if the Court is willing to disclose, but I would  
13 just like to know what they're for.

14 MR. SCHECHTER: That's the purpose of their  
15 being ex parte.

16 THE COURT: At this time I'm going to sign  
17 the subpoenas.

18 MS. JOHNSON: Just so your Honor knows,  
19 counsel had provided Judge Donnino, when we were before  
20 him, with various subpoenas, including My Space or  
21 Facebook and New York City Board of Education. I don't  
22 know if those are returned to Judge Donnino as part of  
23 the file, so --

24 THE COURT: I'm hearing that for the first  
25 time. I'm not in possession of anything from Judge

1                   Donnino other than the court file.

2                   MR. SCHECHTER: I respectfully request an  
3                   opportunity to review what counsel says she has given  
4                   me so I can respond adequately to the Court's inquiry,  
5                   your Honor. She's indicated she's given me some new  
6                   Rosario material and I haven't had, really, a chance to  
7                   look at it. I'm trying to arrange my file on the desk  
8                   and -- however, the other materials that I had  
9                   requested, your Honor, from counsel and from -- I asked  
10                  the Court direct they provide me have not been provided  
11                  me based upon what she said and on that basis I -- you  
12                  know, I have an issue with the Rosario material that  
13                  was requested and one of them is a mandatory report  
14                  that the police officer is required to submit with  
15                  respect to allegations of child abuse and those  
16                  documents I have not been given and unless he did not  
17                  do so, which means he violated the law, I request a  
18                  copy of those reports.

19                  That's just one of them, Judge. There was  
20                  several others that I requested as well.

21                  MS. JOHNSON: Well, as to first that, Judge,  
22                  I don't have a problem turning them over at trial, but  
23                  I don't see how they're Rosario for purposes of a  
24                  Huntley Hearing or for purposes of a Mapp Hearing.

25                  One other request was there was an issue

1 about the second page of the written statements.

2 THE COURT: Yes.

3 MS. JOHNSON: I have a copy of that and  
4 unfortunately the paper that the Police Department uses  
5 is bigger than 11 by 14, so the part that was missing  
6 on the first page when it was Xeroxed just says to be  
7 continued on the other page so I'll have copies of that  
8 for counsel right now.

9 THE COURT: All right, could you also, at  
10 some point, give copies for the Court because --

11 MS. JOHNSON: I will, Judge.

12 THE COURT: These are the defendants  
13 so-called written statements, yes?

14 MS. JOHNSON: Yes, your Honor.

15 THE COURT: And I take it there's one page  
16 from June 24th, '08 at 7:30 a.m. and that's just a  
17 single page?

18 MS. JOHNSON: Yes.

19 THE COURT: And then there's a second one or  
20 actually the first one from June 24th of '08 at  
21 6:25 a.m.?

22 MS. JOHNSON: Yes.

23 THE COURT: And that's the two-page one?

24 MS. JOHNSON: Correct.

25 THE COURT: Which I also don't have, other

1 than the first page.

2 MS. JOHNSON: And then there is 8:30 on June  
3 24th. That is a question/answer page.

4 THE COURT: Yes, that I have.

5 MS. JOHNSON: I'm giving counsel and the  
6 Court the copy of the second page.

7 Judge, when I made a copy of the first page  
8 to show the bottom of it, it cuts off the top of it so  
9 I'm going to use one to mark it. I'll show it to  
10 counsel and if he wants me to copy it as two pages, the  
11 problem is the Xerox paper just isn't big enough.

12 THE COURT: All right, could I just take a  
13 look at what you have in your hand?

14 MS. JOHNSON: Sure.

15 (Shown to Court.)

16 MS. JOHNSON: Your Honor, I'll show  
17 Mr. Schechter the bottom of the page. It just seems to  
18 get cut off every time we copy it.

19 THE COURT: All right, Mr. Schechter, I don't  
20 see any reason why we can't proceed with Detective  
21 Shulman at this point. We're still in, I take it, the  
22 middle of his direct or coming at the end of his  
23 direct.

24 The additional Rosario material here, in  
25 large part, seems to pertain to Officer Alfaro.

1                   MR. SCHECHTER: Well, I would like the  
2 opportunity, prior to beginning my cross-examination of  
3 Detective Shulman to review this material, your Honor.

4                   THE COURT: And I intend to give that to you.

5                   MR. SCHECHTER: Thank you.

6                   And the other issue is the Rosario material  
7 that I had named earlier on the record that I have not  
8 been supplied with. I don't think we've really dealt  
9 with that, Judge.

10                  Now, counsel has indicated to me she was  
11 going to contact the Queens District Attorney's Office  
12 with respect to materials contained by him in his file  
13 and I submit that's inadequate.

14                  As the prosecutor in this case it is her  
15 obligation to provide me with those Rosario materials  
16 that I am entitled to under the law, whether or not  
17 Jared Rosenblatt has them or not.

18                  MS. JOHNSON: Your Honor, I spoke to the ADA  
19 in Queens. He faxed me over on Thursday and Friday a  
20 copy of his file that he had not yet provided to us.

21                  There is handwritten notes in the file. I  
22 showed them this morning to Police Officer Alfaro and  
23 to Detective Shulman. They are neither of their notes.  
24 They are actually the DA's work product and his  
25 information and Rosario material and at this point,

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1           from what I can read from it, most of it has to do with  
2           conversations with the complainant and his work product  
3           with regards to the file.

4                         THE COURT: When you say his, you're  
5                         referring to --

6                         MS. JOHNSON: The DA in Queens. Yes, Judge.

7                         MR. SCHECHTER: I would ask the Court to  
8                         examine the documents, your Honor, to make the  
9                         determination if there's Rosario issues there.

10                         Additionally, it's my experience that  
11                         District Attorneys routinely, when they speak to  
12                         arresting officer or complainants, make notes on their  
13                         file concerning the conversations and therefore if the  
14                         materials are copied from Mr. Rosenblatt's file  
15                         regarding conversations he had with the officer who is  
16                         testifying now, I certainly am entitled to those.

17                         So if counsel is making some representation  
18                         as to work product, I would like the Court to make sua  
19                         sponte.

20                         THE COURT: Well, is this -- I thought I  
21                         understood you to say that these are notes that the DA  
22                         had with the complainant, no?

23                         MS. JOHNSON: The first page, Judge, is notes  
24                         about the complainant and notes -- the ones that refer  
25                         to the detective, it appears to be work product with

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1 regard to his review of the file.

2 I'm happy to show them to the Court. Two  
3 pages are completely about -- it says interview with  
4 the complainant. I'll provide them to the Court now,  
5 and the rest of it, other than grand jury testimony  
6 that he has already provided to me, is the domestic  
7 incident report, which wouldn't -- has nothing to do  
8 with the Huntley or the Mapp portion, I would submit to  
9 the Court, and the actual DA's -- their version -- we  
10 have yellow cards in our files for notes, their version  
11 of the yellow card and their ECAB paperwork that  
12 references bail information, nothing about the  
13 detective, but I'll happily hand that up to the Court.

14 THE COURT: One other item I think  
15 Mr. Schechter had referenced last week is is there any  
16 reports that got generated by anybody with regard to  
17 the detective requesting any kind of commendation or  
18 recognition with regard to the case itself?

19 MR. SCHECHTER: No. It would be the  
20 commanding officer, after speaking to the detective,  
21 would then make a recommendation.

22 THE COURT: Right, I understand.

23 MS. JOHNSON: I didn't see anything in his  
24 file. I can step out, ask him and double check.

25 THE COURT: Why don't you do that?

1                   Why don't you hand me up that material so I  
2 can at least take a look at that?

3                   (Shown to Court.)

4                   (Pause in the proceedings.)

5                   THE COURT: And the answer is?

6                   He doesn't know.

7                   MS. JOHNSON: There was no request for  
8 departmental recognition made in this case by the  
9 officer or the detective.

10                  THE COURT: Okay.

11                  (Pause in the proceedings.)

12                  MR. SCHECHTER: We also have that request for  
13 the report he was supposed to mandatorily (sic) make to  
14 the --

15                  THE COURT: Let's see.

16                  I take it, Ms. Johnson, that you don't have  
17 the report that Mr. Schechter is referring to or you're  
18 not aware of its existence.

19                  MS. JOHNSON: I do. I believe I said there's  
20 nothing in it that's relevant for purposes of the  
21 hearing.

22                  MR. SCHECHTER: Your Honor, I, for the life  
23 of me, don't understand why prosecutors do this.  
24 Rosario material, it's sort of like trial by ambush,  
25 they give it to you at the last minute --

1                   THE COURT: Mr. Schechter, before we get on  
2 soap boxes and give speeches can I look at the material  
3 before --

4                   (Paused in the proceedings.)

5                   THE COURT: Ms. Johnson, this -- the  
6 documents that you handed to me, this is from the  
7 Queen's Assistant DA?

8                   MS. JOHNSON: Yes.

9                   THE COURT: The first page, is this his notes  
10 of his interview with the complainant?

11                  MS. JOHNSON: I don't have another copy of  
12 it, Judge, so I would have to take a look at what the  
13 Court is looking at.

14                  Your Honor, I'm just going to step out and  
15 ask the detective to show me which is the ACS work  
16 sheet because they all look alike to me.

17                  THE COURT: Okay.

18                  (Pause in the proceedings.)

19                  THE COURT: All right, just to try to address  
20 some of these Rosario materials, Mr. Schechter, the  
21 packet or material Ms. Johnson gave me from the Queen's  
22 Assistant DA would appear to me, for the most part to,  
23 be his interview with the complainant in this case.

24                  There doesn't appear to be any material, at  
25 least at this time, at this stage of the hearing, that

1       would be considered Rosario material. That may be  
2       different as far as the trial is concerned as far as  
3       the complainant is concerned. I don't see anything  
4       really here that would touch upon the issues that are  
5       going to be addressed at this hearing.

6                  People, do you want to -- what's the other  
7       material?

8                  MS. JOHNSON: Yes, as to the adult and child  
9       protective child services information, there was part  
10      of, in one of the complaint reports, our version of a  
11      crime report, there was reference to it.

12                 I just stepped outside and spoke to Detective  
13      Shulman. He never spoke to adult protective services.  
14      In fact, he said by the time he met with the victim  
15      adult protective service was already at the precinct  
16      meeting with the victim, so another officer, not  
17      testifying at this hearing, would have prepared that  
18      paperwork and contacted ACS.

19                 He did indicate he did speak with them, but  
20      no paperwork was generated from him and they were  
21      already there when he got there, so --

22                 THE COURT: All right, and I think, having  
23      myself reviewed the portion of our testimony that we've  
24      had so far, he does state when the complainant does  
25      come to the precinct I think an ACS worker is there, as

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1           a matter of fact?

2           MR. SCHECHTER: I'm sorry, your Honor?

3           THE COURT: I think in his direct testimony  
4           so far Detective Shulman has testified that there was  
5           an ACS worker that was present at the 105 Precinct  
6           interviewing the complainant.

7           Anything else, Mr. Schechter?

8           MR. SCHECHTER: Not at this time, your Honor.

9           THE COURT: All right, so, if we could --

10          MS. JOHNSON: Let me just rev up, make sure  
11          this is working.

12          THE COURT: I think, Ms. Johnson, we were at  
13          People's 4?

14          MS. JOHNSON: Yes, I have that, your Honor.

15          And I believe only one page was marked, so  
16          I'll put it on the record.

17          (The witness, Detective Leonard Shulman,  
18          having previously been sworn, resumed the witness  
19          stand.)

20          THE CLERK: Detective, you're reminded that  
21          you're still under oath.

22          THE WITNESS: Yes.

23          MS. JOHNSON: May I, Judge?

24          THE COURT: Yes.

25          MS. JOHNSON: Your Honor, when we left off on

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1           Thursday I had asked for the June 24th, 6:25 statement  
2           to be marked. It is two pages. One page was marked.  
3           I just want the record to note that it is a two-page  
4           document. I don't know if the Court reporter has to  
5           change it on the sticker to say it's actually two  
6           pages.

7                            MR. SCHECHTER: May I see the document,  
8                            please?

9                            (Shown to counsel.)

10                  MS. JOHNSON: If I could have it shown to the  
11                  witness, please?

12                           (Shown to witness.)

13                  DIRECT EXAMINATION CONT'D

14                  BY MS. JOHNSON:

15                  Q. Detective Shulman, if you could take a look at  
16                  People's 4, the two-page document for identification  
17                  purposes, please?

18                           Do you recognize that?

19                  A. Yes, I do.

20                  Q. What do you recognize it to be?

21                  A. It is a photocopy of a two-page statement that was  
22                  written by Mr. Gopaul in my presence.

23                  Q. Is that a fair and accurate copy of the original  
24                  statement that you took on June 24th, 2008?

25                  A. Yes, it is.

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1 MS. JOHNSON: Your Honor, I would ask that  
2 that be marked into evidence for purposes of the  
3 hearing.

4 MR. SCHECHTER: May I have a voir dire, your  
5 Honor?

6 THE COURT: Yes.

7 VOIR DIRE EXAMINATION

8 BY MR. SCHECHTER:

9 Q. Detective Shulman, that isn't a fair and accurate  
10 copy of the original, is it?

11 A. Pardon me?

12 Q. That is not a fair and accurate copy of the  
13 original, is it?

14 A. It's a photocopy, but it represents what the  
15 original looks like.

16 Q. Did you tell the grand jury that the -- there's a  
17 little scribble that happened to get written on the paper?

18 MR. SCHECHTER: I don't have a page number,  
19 Judge, so I cannot refer to the page number.

20 Q. Did you tell them there's a little scribble that  
21 just happened to get written on the original that's not on  
22 the copy?

23 MS. JOHNSON: Which page?

24 MR. SCHECHTER: Counsel, you did not give me  
25 a cover page, so I can't tell you what date it is. I

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1 can't tell you what page number it is because there's  
2 no page numbers on here.

3 Let me just say, in the copies on the top you  
4 may want to look on the right top -- you might want to  
5 look up 66. If you look in the right corner on the  
6 top, 66.

7 A. I'm not sure what document you're referring me to  
8 look at.

9 MR. SCHECHTER: May I approach the witness,  
10 your Honor?

11 THE COURT: Yes.

12 Q. Detective Shulman, did you tell the grand jury  
13 that the original had some scribble that happened to get  
14 written on the paper of the original that's not on the copy.

15 Did you tell them that?

16 A. I might have, but I don't believe -- I wasn't  
17 referring to the statement. There's more than one statement  
18 in this case.

19 Q. Which statement were you referring to there?

20 A. Well, I believe I was speaking in regards to a  
21 statement that we haven't yet come to.

22 Q. May I see the statement you've got there?

23 THE COURT: You're talking about the one  
24 that's been marked?

25 MR. SCHECHTER: The one before the Court,

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1 yeah.

2 (Shown to counsel.)

3 MR. SCHECHTER: I stand corrected. Thank  
4 you, Judge. I have no more questions at this time of  
5 the witness on voir dire.

6 THE COURT: Any objection for the purposes of  
7 the hearing for this statement being received?

8 MR. SCHECHTER: None for the purpose of the  
9 hearing, Judge.

10 THE COURT: So marked.

11 MS. JOHNSON: If I could have that marked,  
12 please, your Honor?

13 (People's Exhibit 4 received in evidence.)

14 MS. JOHNSON: If I could have it shown to the  
15 witness?

16 (Shown to witness.)

17 DIRECT EXAMINATION CONT'D

18 BY MS. JOHNSON:

19 Q. Detective Shulman, if you could take a look at  
20 People's 4 in evidence, that two-page statement?

21 Who provided the name, address, date and time that  
22 appears on that document?

23 A. Mr. Gopaul.

24 Q. Is there any part of any page of that document  
25 that is in your handwriting?

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1           A. On Page 2 I affixed my signature indicating my  
2 shield number and then I noted a date and time at the  
3 conclusion of this written statement.

4           Q. Can you explain to us how it was that it came  
5 about that the defendant, after being given a piece of paper  
6 and a pen, wrote this statement?

7                         What happened in the room?

8           A. I had explained to Mr. Gopaul that, you know, his  
9 daughter had made some allegations and I got to the point I  
10 asked him if he wanted to make a statement, if he wanted to  
11 make a written statement.

12                  He indicated he did.

13                  I gave him a pad and a pen. I said, you know, "If  
14 you can indicate your name, address, phone number and  
15 today's date and time on the top and then if you could write  
16 what your story is."

17           Q. What information did you give the defendant about  
18 what his daughter had said?

19                  THE WITNESS: I'm just going to refer back to  
20 my complaint follow-up, your Honor, just to  
21 refresh my memory?

22           A. Okay, I had asked him if he knew why he was under  
23 arrest and in custody a few moments prior to this statement  
24 and he said on the Saturday before he had an argument with  
25 his daughter and he slapped her.

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1                   So I then asked him if he would like to make a  
2 written statement about it and upon indicating yes is when I  
3 gave him an opportunity to make a written statement about  
4 what had occurred.

5                  Q. Did you explain to the defendant what type of  
6 information should be put into this two-page document?

7                  A. Other than his words about what had transpired  
8 with his daughter.

9                  Q. Did you watch him sign this and did you watch him  
10 write it?

11                 A. Yes, I did.

12                 Q. Did you ask him if he wanted to make any changes?

13                 A. Yes, I did.

14                 Q. What did he say?

15                 A. He said no.

16                 Q. At any time while he was writing the statement did  
17 he ask to speak to an attorney?

18                 A. No, he did not.

19                 Q. If you could take a look at the first page, the  
20 first line of the first paragraph, where it indicates  
21 Saturday, June 21st, 2008?

22                   Do you see the date where it says June 21st?

23                 A. Yes, I do.

24                 Q. And do you see that there is a one marked over the  
25 two on the 22nd?

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1 A. Yes, I do.

2 Q. Who made that marking?

3 A. Mr. Gopaul.

4 Q. Detective, can you read for us what has been  
5 marked into evidence as People's 4?

6 THE COURT: Is that really necessary?

7 MS. JOHNSON: If your Honor --

8 THE COURT: No.

9 MS. JOHNSON: Even better. Thank you, Judge.

10 Q. At any time during the time the defendant was  
11 writing the statement did he ask to speak to an attorney?

12 A. No, he did not.

13 Q. At any time did he tell you he no longer wished to  
14 speak to you?

15 A. No, he did not.

16 Q. At any time did he indicate he had any questions  
17 for you?

18 A. No, he did not.

19 Q. Was he cooperative with you?

20 A. Yes, he was.

21 Q. Was he handcuffed at the time?

22 A. No, he was not.

23 Q. Was your weapon still secured?

24 A. Yes, it was.

25 Q. And other than telling the defendant -- other than

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1 asking him if he wanted to make any statement was there any  
2 conversation between the defendant and yourself while he was  
3 actually writing?

4 A. No.

5 Q. And you observed him sign it?

6 A. Yes, I did.

7 Q. Okay. Was that the end of your contact with  
8 Harold Gopaul?

9 A. No, it was not.

10 Q. What happened -- excuse me, let me step back for  
11 one second.

12 Did you ask the defendant to read his statement  
13 after he wrote it out?

14 A. I did.

15 Q. And was that the time you asked him if he wanted  
16 to make any changes?

17 A. Yes.

18 Q. Did you observe him read the statement over?

19 A. Yes.

20 Q. Okay. What did defendant ask of you following  
21 signing the statement?

22 A. He asked if he could use the restroom. I ceased  
23 the interview and I brought him to the restroom.

24 Q. The restroom is outside of the interview room?

25 A. Yes, it is.

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1 Q. Was he handcuffed when he was brought to the  
2 restroom?

3 A. Yes, he was.

4 Q. And where did you bring him after the restroom?

5 A. He was brought to the restroom. He was  
6 unhandcuffed so he could do what he needed to do in the  
7 restroom. He was then rehandcuffed and brought back to my  
8 office to the interview room where the handcuffs were taken  
9 off him.

10 Q. And what happened in the interview room when you  
11 came back from the restroom?

12 A. Initially, I just had Mr. Gopaul sit in the  
13 interview room and I took a little break from speaking to  
14 him.

15 Q. Where did you go?

16 A. I believe I went to speak to the victim. I  
17 probably went to my desk.

18 MR. SCHECHTER: Objection to what the officer  
19 probably did, Judge.

20 THE COURT: Yeah, if you recall what you did,  
21 detective -- if you're not sure just tell us.

22 THE WITNESS: I'm not 100 percent sure. I  
23 know I did other things.

24 Q. You left the interview room?

25 A. Yes, I did.

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1 Q. Who was with the defendant when you left the  
2 interview room?

3 A. He was by himself.

4 Q. Was there an officer outside the room?

5 A. I don't recall, but the interview room was  
6 secured.

7 Q. When you left was he handcuffed?

8 A. No, he was not.

9 Q. Did he ask you for anything before you left?

10 A. No, he did not.

11 Q. Did you have any conversation with him before you  
12 left?

13 A. I believe I said, "I'll be back with you in a  
14 little while," or something similar to that nature.

15 Q. Did there come a time when you went back to the  
16 interview room?

17 A. There did.

18 Q. Approximately what time was that?

19 A. I think it was about 7:20 or 7:25.

20 Q. What was your purpose in going back to the  
21 interview room?

22 A. To continue speaking to Mr. Gopaul in regards to  
23 the allegations made against him.

24 Q. What was the defendant doing when you went back  
25 into the interview room?

1           A.     He was sitting in a chair facing the table in the  
2 room.

3           Q.     Did you sit down at the table?

4           A.     Yes, I did.

5           Q.     What happened?

6           A.     I sat down across from Mr. Gopaul, the first chair  
7 when you walk in the room again. I indicated to him that  
8 his step daughter, Sana Awan, had made some allegations  
9 against him that there was some activity of an inappropriate  
10 nature and if he wanted to talk to me about it.

11          Q.     Did you give the defendant the details of the  
12 allegation?

13          A.     I did not.

14          Q.     Did you advise him that it was of a sexual nature?

15                 THE WITNESS: If I could just refer to my  
16 complaint follow-up again, your Honor?

17                 THE COURT: Yes.

18                 MR. SCHECHTER: Your Honor, please note my  
19 objection.

20                 THE COURT: I will note your objection. He  
21 can look at it.

22                 Go ahead.

23          A.     Okay, I believe my words were that the allegation  
24 was he was acting inappropriately towards her and that I was  
25 not going to tell him exactly what the allegation was, but

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1 that I would give him an opportunity to discuss things if he  
2 wanted to.

3 Q. Did you actually tell him you were not going to  
4 give him the details of the allegation?

5 A. Yes, I did.

6 Q. What was his response to that?

A. That he would like to say something about it.

8 Q. What did you do after the defendant told you he  
9 wanted to say something about it?

10           A. Again, I'm just referring to my notes again here  
11       in the complaint follow-up.

12 MR. SCHECHTER: Excuse me, your Honor, I'm  
13 sorry to interrupt, however I'm constrained to object  
14 simply because the officer is not testifying from  
15 memory.

22 THE COURT: Ms. Johnson, would you like to  
23 ask the officer some questions with regard to the  
24 document?

25 MS. JOHNSON: Yes.

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1 Q. Detective, you can not read from a document not in  
2 evidence.

3 If you wish to refresh your memory you must say so  
4 and once you're done refreshing your memory with your notes  
5 please look up and don't read from any documents. You must  
6 testify as to what your recollection is after having your  
7 memory refreshed.

8 When you went back into the room what did you do  
9 after the defendant indicated he wanted to talk to you?

10 A. He said something of the nature he felt bad about  
11 it and he wanted to make a statement.

12 I then gave him a note pad and a pen and again  
13 said, "Here," you know, "if you could right write your name,  
14 address, the date and time and you could write your  
15 statement."

16 Q. Similar to the notepad you had given to him  
17 before?

18 A. I believe it was the same notepad, but the  
19 previous statement had been removed from the top of the  
20 notepad.

21 Q. Were the pages blank?

22 A. Yes.

23 Q. What did you say to the defendant when you gave  
24 him the pad and the pen?

25 A. Something of the effect of, "If you could write

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1 your name, address and phone number and the date and time on  
2 the top and then write," you know, "your statement in your  
3 words as to what you want to say about this."

4 MS. JOHNSON: Your Honor, I'm going to ask  
5 that this be marked as People's Exhibit 5 for  
6 identification purposes?

7 THE COURT: People's 5.

8 (People's Exhibit 5 marked for  
9 identification.)

10 MS. JOHNSON: Can I have People's 4 back?  
11 (Shown to counsel.)

12 Q. Detective, if you could take a look at People's 5  
13 for identification purposes?

14 Do you recognize that?

15 A. I do.

16 Q. What do you recognize it to be?

17 A. It is a photocopy of a statement written by  
18 Mr. Gopaul.

19 Q. How do you know that?

20 A. I observed it being written and after its  
21 completion I did sign my name and placed my shield number  
22 and I did note the date and time on the bottom of said  
23 statement.

24 Q. Is that a fair and accurate copy of the original  
25 that was taken on June 24th, 2008?

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1 A. Yes.

2 MS. JOHNSON: Your Honor, we would offer  
3 People's 5 in evidence for purposes of the hearing.

4 MR. SCHECHTER: Voir dire, your Honor?

5 THE COURT: Yes.

6 VOIR DIRE EXAMINATION

7 BY MR. SCHECHTER:

8 Q. I redirect your attention to your grand jury  
9 testimony, detective, where you indicated at Page 66 that  
10 there was some scribble written on the original that was not  
11 on the copy.

12 Would you please show us where the scribble that's  
13 written on the original that's not on the copy, then?

14 A. And, again, that's not -- I don't believe that's  
15 pertinent to this particular one page.

16 THE COURT: Well, let me ask you this.

17 THE WITNESS: There is another page, your  
18 Honor, that Ms. Johnson has not introduced yet.

19 THE COURT: But it's not People's 5?

20 THE WITNESS: It's not that page right there.

21 MR. SCHECHTER: Okay. May I have the paper,  
22 please?

23 (Shown to counsel.)

24 Q. Officer, on this copy there seems to be something  
25 written on the very top above Harold Gopaul's name.

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1            Could you please tell the Court what, if any --  
2        what that is?

3            It's on the copy.

4            MS. JOHNSON: I think it's the staple when I  
5        Xeroxed it.

6            (Shown to witness.)

7            A. It looks like a staple loop.

8            Q. Do you see the original?

9            Do you have the original there?

10          A. Yes, I have the original.

11          Q. Could you please look at the original and let me  
12        know if that's on there?

13          A. It's not on the original. It's either a flaw in  
14        the photocopy or the copier this was copied from had a  
15        staple in it.

16          MR. SCHECHTER: May I see the original,  
17        please?

18          THE COURT: Yes.

19          (Shown to counsel.)

20          MR. SCHECHTER: Thank you.

21          No more questions, Judge.

22          THE COURT: Any objection?

23          MR. SCHECHTER: Not for the purposes of the  
24        hearing.

25          THE COURT: All right, so we'll receive

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1 People's 5 in evidence.

2 (People's Exhibit 5 received in evidence.)

3 MS. JOHNSON: If I could have it shown to the  
4 witness, please?

5 (Shown to witness.)

6 DIRECT EXAMINATION CONT'D

7 BY MS. JOHNSON:

8           Q. Detective, if you could take a look at People's 5  
9       in evidence?

10 Whose handwriting appears on that document?

11           A. With the exception of my signature and shield and  
12 date and time across the bottom, Mr. Gopaul's handwriting is  
13 affixed on this paper.

14 Q. On the top right-hand side where it says the date  
15 and time, who provided that information?

16 A. Mr. Gopaul.

17 Q. Did you observe him write this statement?

18 A. Yes, I did.

19 Q. Was this after you had issued Miranda warnings to  
20 him?

21 A. Yes, it was.

22 Q. And at this time was your gun still secured?

23 A. Yes, it was.

24 Q. Was this after the defendant went to the bathroom?

25 A. Yes, it was.

1 Q. Was any physical force used on the defendant prior  
2 to him writing this statement?

3 A. No, it was not.

4 Q. Were any threats made to the defendant prior to  
5 him writing this statement?

6 A. No, there were not.

7 Q. Did you ask the defendant if he wanted to make any  
8 changes to the statement?

9 A. Upon his completion of writing the statement I  
10 asked him to read it over to himself and make sure it was  
11 what he wanted to say and if there were any changes he  
12 wanted to make he was able to.

13 THE COURT: Does that mean he did make  
14 changes or he didn't make changes?

15 THE WITNESS: He didn't make changes, but he  
16 was afforded an opportunity if he wanted to.

17 Q. Did you observe him reread the statement?

18 A. Yes, I did.

19 Q. Did you observe him sign it?

20 A. Yes, I did.

21 Q. And the June 24th, 2008 at 8:30 hours, what does  
22 that indicate?

23 A. That was the time I was signing it as this  
24 particular statement was complete.

25 Q. Was that after you observed the defendant read the

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1 statement over?

2 A. Yes, it was.

3 Q. Was that after you asked him if he wanted to make  
4 any changes?

5 A. Yes.

6 Q. At any time while he was writing the statement did  
7 he ask to speak to an attorney?

8 A. No, he did not.

9 Q. At any time did he indicate he no longer wished to  
10 speak to you?

11 A. No, he did not.

12 Q. Was the defendant cooperative with you at this  
13 time in the interview room?

14 A. Yes, he was.

15 Q. Did he ask to go to the bathroom while he was  
16 signing this?

17 A. No, he did not.

18 MS. JOHNSON: I can take back People's 5.

19 (Shown to counsel.)

20 Q. After you affixed your signature to the bottom of  
21 that document was that the end of your conversation with the  
22 defendant?

23 A. No, it was not.

24 Q. What happened next?

25 A. Immediately after I signed the document and dated

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1 and timed on the bottom I asked him if he had any vibrators  
2 in his car.

3 Q. Did you memorialize that conversation in any way?

4 A. After the question was answered.

5 Q. Can you walk us through how that conversation  
6 happened?

7 A. Right after I finished that other written  
8 statement I asked him if he had any vibrators in the car.

9 I believe he said that he had some vibrators in  
10 his house and that he had a body massager in his car that  
11 was, you know, for himself, but that he had never -- hadn't  
12 used it on his daughter.

13 Q. What did you do after this conversation?

14 A. I took off the previous statement off the notepad  
15 and I had another notepad. I wrote the date and time that I  
16 was asking the question. I then memorialized the question I  
17 had asked him and the answer he had given in reply.

18 MS. JOHNSON: Your Honor, I'll ask that this  
19 be marked as People's Exhibit 6 for identification.

20 THE COURT: People's 6.

21 (People's Exhibit 6 marked for  
22 identification.)

23 MS. JOHNSON: If I could have that shown to  
24 the witness, please?

25 (Shown to witness.)

ws

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1 Q. Detective Shulman, take a look at People's 6 for  
2 identification purposes, please.

3 Do you recognize that?

4 A. Yes, I do.

5 Q. What do you recognize it to be?

6 A. It is the -- a photocopy of the question and  
7 answers that I memorialized when I was speaking to  
8 Mr. Gopaul on June 24th of 2008.

9 Q. How do you know that?

10 A. It's in my handwriting and my signature appears on  
11 the bottom as I had placed it.

12 Q. And is that a fair and accurate copy of the  
13 original?

14 A. I mean, other than the confidential stamp that I'm  
15 assuming that somebody in the DA's Office or somebody must  
16 have --

17 MR. SCHECHTER: Objection to what the officer  
18 assumes, please.

19 Q. Do you have the original with you, detective?

20 A. Yes, I do.

21 Q. If you could just take that out of your case  
22 jacket, please?

23 MS. JOHNSON: I'll have that marked as  
24 People's 6A.

25 THE COURT: Fine.

ws

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1 MS. JOHNSON: For the hearing.

2 MR. SCHECHTER: What is 6A, now?

3 MS. JOHNSON: The original.

4 THE COURT: It's the original without the  
5 stamp on it.

6 (People's Exhibit 6A marked for  
7 identification.)

8 Q. Detective, if you could take a look at People's 6  
9 and 6A for identification purposes?

10 (Shown to witness.)

11 Q. Is People's 6 a fair and accurate copy other than  
12 the stamp from the original 6A that you just took from your  
13 case jacket?

14 A. Yes, it is.

15 Q. Is there anything missing from the Xerox copy that  
16 is on the original?

17 A. No.

18 Q. Or vice versa, other than the stamp?

19 A. No.

20 Q. Are there any scribbles on that page that counsel  
21 is referring to before?

22 A. Yes, there is.

23 Q. And is that on the original or on the copy?

24 A. It is on the original.

25 Q. Is it on the copy?

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1 A. It is on this particular copy, yes.

2 Q. And so it's a fair and accurate copy other than  
3 the stamp?

4 A. Yes.

5 MS. JOHNSON: Your Honor, we would ask that  
6 People's 6 be marked into evidence for purposes of the  
7 hearing.

8 THE COURT: And that's the copy?

9 MS. JOHNSON: The copy, Judge.

10 MR. SCHECHTER: Voir dire, if I may, Judge?

11 THE COURT: Yes.

12 VOIR DIRE EXAMINATION

13 BY MR. SCHECHTER:

14 Q. Officer do you not recall testifying a short time  
15 ago that every time I asked you a question concerning the  
16 scribbles on the original that were not on the copy you had  
17 stated there were other papers that -- other statements that  
18 were made that had not yet been shown to you?

19 Do you recall that question and your answer?

20 A. Yes.

21 Q. Now you tell us that you -- you testified in the  
22 grand jury that there was scribble on the original, but not  
23 on the copy -- I'm sorry -- what are you referring to?

24 What scribble is not on the original that's on the  
25 copy?

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1           A. I don't know the specific context of that  
2 testimony, but I believe on the lower portion of this, I  
3 guess it's number 6A, and 6, that there's a Q with a couple  
4 of lines through it, that after I had completed my  
5 questioning of Mr. Gopaul and had signed it, that subsequent  
6 to that is when that Q and the dash had gotten written.

7           MR. SCHECHTER: I respectfully object to this  
8 exhibit. I don't think this exhibit is in the same  
9 condition at the time it was made.

10           THE COURT: And the basis for that is?

11           MR. SCHECHTER: Basis is his grand jury  
12 testimony where he indicated that there is, and I'll  
13 quote it, Judge, "I think there's a little scribble  
14 that just happened to get written on the paper of the  
15 original that's not on the copy."

16           I can show you the grand jury testimony if  
17 the Court wishes.

18           THE COURT: I have the grand jury testimony.

19           MR. SCHECHTER: Now the officer testifies, in  
20 fact, that it's on both.

21           What is he referring to?

22           THE WITNESS: I mean, if I could, your Honor?

23           MR. SCHECHTER: He said it's not on the first  
24 statement, it's not on the second statement.

25           Now we got the third and it's not on there.

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1                   THE COURT: All right, do you have any  
2                   questions, Ms. Johnson, of the detective?

3                   MS. JOHNSON: I'm not done with the  
4                   statement.

5                   THE COURT: Okay.

6 DIRECT EXAMINATION CONT'D

7 BY MS. JOHNSON:

8 Q. Detective, that scribble, the Q that's indicated  
9 on that document, does that appear on your original copy?

10 A. Yes.

11 Q. Your original?

12 A. Yes.

13 Q. Can you tell us when that was put on the piece of  
14 paper?

15 A. Subsequent to my completion of my interview with  
16 Mr. Gopaul while I was still in my office that day.

17 Q. And what was the reason or why did you put that Q  
18 on the piece of paper?

19 A. I don't know specifically. I mean -- can I say  
20 what I believe I was thinking at the time?

21 MR. SCHECHTER: Objection.

22 THE COURT: Yeah, if you don't know exactly  
23 why it was there, just tell us that.

24 A. I don't recall specifically why it's there.

25 Q. Was this Q on the bottom of the page marked on

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1       that piece of paper while you were in the interview room or  
2       after?

3                    MR. SCHECHTER: Objection, it's been asked  
4                    and answered. The officer already testified when he  
5                    put that on the paper, after the interview.

6                    THE COURT: I'll allow it.

7                    You can answer that.

8        A. After the interview was completed.

9        Q. While in the room with the defendant or after?

10      A. I don't recall, specifically.

11      Q. Does the top of the page on top of that scribbled  
12     Q, is that part of your -- of what's marked as  
13     People's Exhibit 6 and 6A, is that a fair and accurate copy  
14     of your memorialization of your interview with the  
15     defendant?

16      A. Absolutely.

17      Q. And which part of People's 6 or 6A was written by  
18     you and which part was written by the defendant?

19      A. There's a drawing that Mr. Gopaul drew of what he  
20     was describing as the vibrators that he was saying was in  
21     his house, that is in his handwriting, and other than his  
22     signature, the rest of the statement is in my handwriting.

23      Q. Under the picture where it narrates what the  
24     picture is of, who wrote that?

25      A. I wrote that.

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1 Q. Was that in the defendant's presence?

2 A. Yes, it was.

3 Q. Did you show that to the defendant after you wrote  
4 what the narrative of that picture is?

5 A. Yes, I did.

6 Q. And did you show the defendant the question and  
7 answer that appeared on that document?

8 A. Yes, I did.

9 Q. And when you showed it to him did he sign  
10 People's 6 or 6A?

11 A. He indicated to me that it was accurate as to the  
12 question I had asked him and what his answer was and to what  
13 he had drawn and what I was labelling as his drawing and  
14 then he affixed his signature as him saying it was accurate.

15 Q. And did he indicate he wanted to make any changes  
16 to either the question, answer or the picture?

17 A. No, he did not.

18 Q. And did you watch him sign it?

19 A. Yes, I did.

20 Q. Did you explain to the defendant how to draw the  
21 picture?

22 A. No, I did not.

23 Q. What did you say to him?

24 A. He made a comment about having vibrators in the  
25 house and I think I said something, "Well, can you describe

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1 what it looked like?"

2 And I think he said something similar to, "It will  
3 be easier if I just draw it for you."

4 MR. SCHECHTER: Objection to what the officer  
5 thinks.

6 THE COURT: Yeah, if you don't know exactly  
7 what it is that he said just tell us that.

8 THE WITNESS: In sum and substance.

9 A. I don't know verbatim, but it was very similar to  
10 that which is what prompted me to give him the paper and pen  
11 and say, "If you want to draw it you can draw it."

12 Q. And everything that appears above your signature  
13 and above the defendant's signature, was that all  
14 memorialized in the defendant's presence?

15 A. Yes, it was.

16 Q. And was that all in the -- memorialized in the  
17 interview room?

18 A. Yes, it was.

19 MS. JOHNSON: Your Honor, for purposes of the  
20 hearing we would ask to offer that part of the  
21 statement into evidence as that is the fair and  
22 accurate copy as the detective testified.

23 MR. SCHECHTER: I'm still objecting, Judge,  
24 on the grounds that it was altered upon the signature.

25 THE COURT: No, I'll -- I'm going to allow

ws

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1                   the entire statement over objection in evidence,  
2                   People's 6.

3                   MR. SCHECHTER: Your Honor, would the Court  
4                   please note that my objection to the offer of this  
5                   material is continuous even throughout the trial,  
6                   rather than my making continual objections to it?

7                   THE COURT: Yes.

8                   MR. SCHECHTER: Thank you, Judge.

9                   (People's Exhibit 6 received in evidence.)

10                  THE COURT: You're not offering 6A in?

11                  MS. JOHNSON: No.

12                  MR. SCHECHTER: 6 is in evidence?

13                  THE COURT: Yes, that's the copy.

14                  MR. SCHECHTER: 6A is not.

15                  MS. JOHNSON: Can the detective leave that in  
16                  his case jacket or is the Court going to need it?

17                  It's marked for ID.

18                  THE COURT: No, it's not being offered at  
19                  this time. He can leave it in his case jacket.

20                  Q. Detective, who wrote the date and time on  
21                  People's 6 on the top right-hand corner of the document?

22                  A. I did. I wrote that.

23                  Q. And is that your handwriting, the question and the  
24                  answer?

25                  A. Yes, it is.

ws

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1                   THE COURT: Just if I could interrupt,  
2 detective, just with regard to if you could take out 6A  
3 again and compare it to 6?

4                   Is 6A a photocopy of 6?

5                   THE WITNESS: Yes, it is, your Honor.

6                   THE COURT: Is there anything on 6A or -- I  
7 should say on 6A that is not on 6, other than the  
8 stamp, the confidential stamp?

9                   THE WITNESS: No, other than that they're  
10 accurate.

11                  Q. Detective, at any time when defendant was making  
12 that drawing did he ask to speak to an attorney?

13                  A. No, he did not.

14                  Q. And at any time did he indicate he no longer  
15 wished to speak with you?

16                  A. No, did he not.

17                  Q. Was he still cooperative?

18                  A. Yes, he was.

19                  Q. Was any forced used upon this defendant prior to  
20 him making that drawing?

21                  A. No, there was not.

22                  Q. And were any threats made upon him prior to him  
23 making that drawing?

24                  A. No.

25                  Q. Was that the end of your contact with the

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1 defendant -- and, I'm sorry, let me just step back.

2 Had anybody walked in and out of the interview  
3 room during this time?

4 A. No.

5 Q. Was that the end of your contact with the  
6 defendant after People's 6 was memorialized?

7 A. I believe I interacted with him further during the  
8 course of the day, but not of any substantive matter.

9 Q. What did you do next?

10 Who did you contact?

11 A. At some point in time I spoke to Police  
12 Officer Alfaro. I indicated to her what the -- what the  
13 statements Mr. Gopaul had made were.

14 I indicated to her that I believe there was  
15 evidence in his home or his vehicle that were pertinent to  
16 the case. I indicated to her that Mr. Gopaul had given me  
17 written consent to search both the vehicle that he was a  
18 legal custodian of and his home to recover items.

19 Q. To your knowledge, was that done?

20 A. Yes.

21 Q. And was it you or Officer Alfaro that recovered  
22 the property in this matter?

23 A. Officer Alfaro recovered the evidence in this  
24 case.

25 MR. SCHECHTER: Objection.

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1 Q. Well, you didn't recover the evidence, right?

2 A. I was present --

3 THE COURT: Objection sustained.

4 Go ahead. You got a new question.

5 Q. Did you recover any evidence in this case?

6 A. I did not.

7 Q. Did there come a time when you contacted the  
8 Queens DA's Office?

9 A. There did.

10 Q. Tell us how that happened?

11 MR. SCHECHTER: Objection.

12 Did he say they did?

13 THE WITNESS: I said I did.

14 THE COURT: All right, you contacted the DA's  
15 Office.

16 Go ahead Ms. Johnson.

17 Q. What was your purpose for contacting the DA's  
18 Office?

19 A. Mr. Gopaul had made statements to me. I had -- at  
20 some point in time I asked him if he would be willing to  
21 make a videotaped statement with the Queens District  
22 Attorney's Office.

23 Q. If I could just stop you there for one moment.

24 Was it before or after the written statements were  
25 given that you asked Mr. Gopaul if he wanted to make a video

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1 statement?

2 A. After.

3 Q. Was it after Miranda warnings had been issued?

4 A. Yes.

5 Q. Was it after People's 1, 2, 3, 4, 5, and 6 that  
6 have been marked into evidence, was it after that time  
7 frame?

8 A. Yes.

9 Q. Was it in the interview room that that  
10 conversation took place?

11 A. Yes.

12 Q. Can you tell us how that came about?

13 What did you actually ask him?

14 A. I indicated to Mr. Gopaul that, if he would like,  
15 that the Queens District Attorney's Office might be  
16 interested in coming and speaking to him and interviewing  
17 him on videotape and if that was something that he would be  
18 willing to do, that I would called the District Attorney's  
19 Office and make an inquiry if he was interested in doing  
20 that.

21 Q. What did he say when you asked him that?

22 A. He said he would be willing to make a video  
23 statement.

24 I left the interview room, leaving Mr. Gopaul in  
25 the interview room, and I contacted the Queens District

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1 Attorney's Office.

2 Q. Was a video subsequently made?

3 A. Yes, it was.

4 Q. Were you present for that?

5 A. Yes, I was.

6 Q. Where was the video made?

7 A. In an interview room in my office.

8 Q. In the 105?

9 A. The 105 Precinct detective squad.

10 Q. Was it the same room that you were interviewing  
11 the defendant in before?

12 A. No, it was not.

13 Q. How come?

14 A. The room that's used to make this particular video  
15 at the initial time of speaking to the defendant, the victim  
16 in this case, Miss Sana Awan, was in that other interview  
17 room, so Mr. Gopaul was spoken to in the second interview  
18 room.

19 At the time that we were going to make the video  
20 Miss Sana Awan was no longer in that room, I had access to  
21 that room, which also has the ability to plug in the video  
22 cassette recorders and is a slightly bigger room to allow  
23 room for the District Attorney, the defendant, myself and  
24 the videographer.

25 Q. Can you tell us how it came about that the

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1 defendant was brought from the smaller interview room to the  
2 video room?

3 A. I took Mr. Gopaul out of the smaller interview  
4 room and walked him to the other interview room and asked  
5 him to have a seat in the chair in the room.

6 Q. Was that before or after the DA's -- the Assistant  
7 District Attorneys and the videographer had arrived at the  
8 precinct?

9 A. After.

10 Q. At any time did the defendant indicate he no  
11 longer wished to make a video statement?

12 A. No, he did not.

13 Q. At any time before or when the Queens DAs arrived  
14 did he indicate that he wants to speak with an attorney?

15 A. No, he did not.

16 Q. Were any other officers or detectives in the video  
17 room prior to the Queens DA's arriving?

18 A. No, there were not.

19 Q. Was the defendant handcuffed in the video room?

20 A. No, he was not.

21 Q. What was -- where was the defendant brought in the  
22 room for when the DAs arrived?

23 Was he sitting at the table?

24 MR. SCHECHTER: Objection, multiple question  
25 and she's leading, your Honor.

ws

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1                   THE COURT: Yeah, sustained.

2                   Q. What was the defendant's position when the Queens  
3 ADAs arrived?

4                   A. He was sitting in a chair at a table in the  
5 interview room.

6                   Q. Who was in the room?

7                   A. I was in the room and the videographer was in the  
8 room.

9                   Q. Is the videographer a civilian or a police  
10 officer?

11                  A. I believe in this case it was a police officer.

12                  MR. SCHECHTER: Objection as to what the  
13 officer believes, again, Judge.

14                  THE COURT: Do you remember, have a  
15 recollection, as to --

16                  THE WITNESS: I'm pretty sure it was a  
17 detective, your Honor.

18                  Q. Is it a detective with your precinct?

19                  A. No.

20                  Q. Somebody with the DA's Office?

21                  A. Yes.

22                  Q. Where was your weapon when you went into that  
23 room?

24                  A. It was still secured in my office in my --

25                  Q. To your knowledge, did the videographer have any

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1       weapons with him?

2           A.    His were also secured upon his arrival prior to  
3       him going into the interview room.

4           Q.    Is that Police Department policy?

5           A.    Yes.

6           Q.    Have you had the opportunity to review that video,  
7       detective, since that date?

8           A.    Yes, I have.

9                   MS. JOHNSON: I'm going to ask that this be  
10       marked as People's Exhibit 7 for identification  
11       purposes.

12                  THE COURT: People's 7.

13                  (People's Exhibit 7 marked for  
14       identification.)

15           Q.    Detective, if you could take a look at People's 7  
16       for ID?

17                  (Shown to witness.)

18           Q.    Do you recognize that tape?

19           A.    Yes, I do.

20           Q.    What do you recognize it to be?

21           A.    It's a videotape that I reviewed that contains a  
22       substance of a video interview with Mr. Gopaul back on  
23       June 24th of 2008.

24           Q.    Is that a fair and accurate copy of the entire  
25       interview with Mr. Gopaul in that room?

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1 A. Yes.

2 MS. JOHNSON: Your Honor, I would ask that  
3 this be marked into evidence.

4 MR. SCHECHTER: May I have a voir dire?

5 THE COURT: Yes.

6 VOIR DIRE EXAMINATION

7 BY MR. SCHECHTER:

8 Q. Detective, is this a copy of the original or is  
9 this the original tape that was made?

10 A. I believe it's a copy.

11 MR. SCHECHTER: Objection to what he  
12 believes, your Honor.

13 THE COURT: Do you know for a fact whether  
14 it's a copy or the original?

15 THE WITNESS: I didn't take the video, I  
16 didn't operate the camera, so I couldn't say  
17 specifically.

18 Q. How do you know that this is a videotape of the  
19 interview of Mr. Gopaul?

20 A. I viewed the videotape on two occasions and  
21 watched the substance of what's on the tape and it is myself  
22 present in a room when Mr. Gopaul is being interviewed by  
23 the Queen's District Attorney's Office.

24 Q. But you don't have that -- that tape is not on for  
25 view now, so you don't know if this tape is the interview of

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1 Mr. Gopaul of your own knowledge?

2 A. Well, I believe in October of '08 when I watched  
3 the video I believe in the grand jury and prior to that I  
4 affixed my signature on the white tape on the side.

5 Q. Is your signature on this tape?

6 A. Yes.

7 MR. SCHECHTER: May I approach the witness,  
8 Judge?

9 THE COURT: Yes.

10 Q. Please show us where your signature is on the  
11 tape?

12 (Shown to witness.)

13 A. (Indicating).

14 MR. SCHECHTER: Then I have no objection for  
15 the purposes of this hearing, Judge.

16 MS. JOHNSON: Your Honor, before I play  
17 that --

18 THE COURT: Mark it.

19 (People's Exhibit 7 received in evidence.)

20 Q. Detective, I'm going to play what's been marked as  
21 People's Exhibit 7.

22 Were Miranda warnings issued again on this tape?

23 A. Yes, they were.

24 Q. And was that done in your presence?

25 A. Yes, it was.

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1 THE COURT: Are you going to play it now?

2 MS. JOHNSON: I am, Judge, yes.

3 (Witness steps down.)

4 MS. JOHNSON: Can I have a minute, Judge?

5 THE COURT: Yes.

6 (Pause in the proceedings.)

7 (People's Exhibit 7 published at this time.)

8 (Witness resumes the stand.)

9 Q. Detective Shulman, where was the defendant brought  
10 at the conclusion of that video?

11 A. Initially, I believe he stayed in that interview  
12 room and at some point in time Officer Alfaro, I believe,  
13 brought him downstairs and he was subsequently transported  
14 to the Queens Central Booking facility.

15 Q. Was your contact with the defendant over at the  
16 end of this video?

17 A. Pretty much, yes.

18 Q. At any time during the totality of your contact  
19 with the defendant on June 24th, 2008 did he ever ask to  
20 speak with an attorney?

21 A. No, he did not.

22 Q. Did he ever indicate to you that he did not want  
23 to speak with you?

24 A. No, he did not.

25 Q. Was there ever a language barrier?

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1 A. No, there was not.

2 Q. Was there ever any force used upon him in your  
3 presence?

4 A. No, there was not.

5 Q. Any threats made upon him?

6 A. No.

7 Q. Any promises made of him?

8 A. No.

9 Q. I have no other questions of Detective Shulman.

10 MR. SCHECHTER: May I have about five to  
11 seven minutes to look at the Rosario material, Judge?

12 THE COURT: Actually, you can have a little  
13 bit longer than that, I have to break by 12:20.

14 So why don't we pick it up at 2:15?

15 MR. SCHECHTER: 2:15?

16 Okay.

17 THE COURT: I take it by then you will have  
18 had enough time to review the material?

19 MR. SCHECHTER: Yes.

20 MS. JOHNSON: Can I leave everything here,  
21 Judge?

22 THE COURT: Yes.

23 We'll see everybody at 2:15.

24 (The luncheon recess was taken at this time.)

25 \* \* \* \* \*

ws

A F T E R N O O N   S E S S I O N

MR. SCHECHTER: I have Pages 2 and 3 of the arrest report -- of the complaint report, but not Page 1 of the complaint report. I would like to know why not.

MS. JOHNSON: Your Honor, Page 1 of the complaint report is similar to our narrative and our crime reports. It reflects conversations with the victim along with personal information of the victim. It has nothing to do with the Huntley or Mapp.

If the Court would like to see it?

(Shown to Court.)

(Pause in the proceedings.)

THE COURT: Who is, People -- who would CV stand for in this report here?

There's a reference to a TPO, I'm assuming that's time and place of occurrence, CV walked inside?

MS. JOHNSON: Crime victim.

THE COURT: I mean, it appears, Mr. Schechter, that this Page 1, the narrative portion which is the only portion that is of any significance at least in terms of what's said, essentially is statements that the complainant, crime victim, stated to, I'm assuming, police personnel.

MR. SCHECHTER: Well, if we can mark that a

1                   court exhibit?

2                   As long as I get that in Rosario material  
3                   when she testifies.

4                   THE COURT: Absolutely. I would think you  
5                   would be absolutely entitled to it.

6                   MS. JOHNSON: I agree.

7                   MR. SCHECHTER: Your Honor, the other thin kg  
8                   is on the arrest report. I have one of three and I have  
9                   two of three, but I don't have three of three.

10                  THE COURT: Is that the arrest work sheet?

11                  MR. SCHECHTER: Arrest report it says here,  
12                  your Honor.

13                  THE COURT: Is that what was handed over to  
14                  you this morning?

15                  MR. SCHECHTER: Either this morning or on  
16                  Friday.

17                  MS. JOHNSON: Your Honor, there is one page  
18                  that I showed counsel of a Page 3, it's completely  
19                  blank, and another page on an arrest report.

20                  I don't have a Page 3 of three. I don't  
21                  believe one exists. I can have Detective Schulman  
22                  double check his case jacket. I don't have a three of  
23                  three. It could have been blank. I have one of three,  
24                  I have two of three and then when I -- next page I have  
25                  is the defendant's mugshot.

1                   MR. SCHECHTER: It says three pages, Judge --  
2                   that's one of the reasons --

3                   THE COURT: I'm at somewhat of a disadvantage  
4                   because it's been awhile since I dealt with Rosario  
5                   material that gets generated, if you will, by Police  
6                   Department, so --

7                   MS. JOHNSON: I can double check. He's right  
8                   outside.

9                   THE COURT: Is this the online systems  
10                  arrest?

11                  Is that what you're referring to?

12                  MR. SCHECHTER: This says omni form system  
13                  arrest.

14                  THE COURT: Right.

15                  MR. SCHECHTER: On the top is written arrest  
16                  report, one of three.

17                  THE COURT: I see that.

18                  MR. SCHECHTER: And the next one also says  
19                  arrest report on the top and then it has my client's  
20                  home and cell numbers and then some information  
21                  underneath with Officer Alfaro's information, but it  
22                  says then three of three which there's no three of  
23                  three. I just don't know where three of three.

24                  MS. JOHNSON: In fact, at the bottom of  
25                  Page 2 it says end of arrest report.

1                           MR. SCHECHTER: No, your Honor, if you look  
2 at the other pages, if you look at the complaint  
3 report, what they mean by end of complaint report they  
4 mean end of complaint report for that page because in  
5 the complaint report there's two of three and three of  
6 three and not one of three. One of three we already  
7 discussed has the complainants information, but it says  
8 on the bottom end of complaint report, so I suppose no  
9 one could say something was written below it, but it  
10 doesn't mean it's the end of the entire report,  
11 apparently. That's why it's confusing.

12                          MS. JOHNSON: The opposite is true for the  
13 arrest report. Bottom of Page 1 of the arrest report  
14 is information and then the bottom of Page 2 says end  
15 of arrest report.

16                          MR. SCHECHTER: Again, same thing with Page 2  
17 and 3 of the complaint report. On the bottom of Page 2  
18 of the complaint report is end of complaint report and  
19 the bottom of Page 3 it says end of complaint report.

20                          What I'm saying to you --

21                          THE COURT: Why don't we do this?

22                          Let's get him on the stand. You ask him --  
23 present these things to him because otherwise you're  
24 asking me to figure out what this detective may have  
25 generated in the way of Rosario material.

1                   MR. SCHECHTER: There's one additional one  
2                   and I only have two of three and I have no idea what  
3                   this is.

4                   (Shown to counsel.)

5                   MS. JOHNSON: What does it say on the cover  
6                   page of your Rosario packet?

7                   Where did you pull that out of?

8                   MR. SCHECHTER: I got it from the group of  
9                   papers you gave me.

10                  MS. JOHNSON: Because the cover page had a  
11                  list of what everything was, so let me just take a look  
12                  at mine.

13                  (Pause in the proceedings.)

14                  It's part of a complaint report that wasn't  
15                  part of the narrative, which is why what was turned  
16                  over, is the defendant's information and the part that  
17                  was redacted was the personal information of the  
18                  complainant.

19                  MR. SCHECHTER: Well, certainly I'm entitled  
20                  to that on Rosario with respect to the complainant, but  
21                  we should have some kind of Court follow-up on this,  
22                  maybe make these Court exhibits, to make sure I get  
23                  these papers and there are other documents I did not  
24                  get and I would like to give reference to them, if I  
25                  may.

1 MS. JOHNSON: I agree, they are absolutely  
2 Rosario for purposes of the trial.

3 THE COURT: I'm a little confused,  
4 Mr. Schechter, as to what you're asking me.

5 MR. SCHECHTER: I could have this marked as a  
6 Court exhibit, if the Court wishes, and ask her why --  
7 there are three papers. I only have two of three.  
8 There's not one of three I don't have and three of  
9 three I don't have. I have no idea what that document  
10 is.

11 MS. JOHNSON: It's part of a complaint  
12 report, your Honor, and the part that was not provided  
13 was narrative about the complainant, information  
14 involving the complainant.

15 The part that was disclosed for hearing  
16 purposes is what was relevant not only to the testimony  
17 of both witnesses here, but the defendant.

18 THE COURT: Let me ask you this.

19 Did you provide -- I'm looking at something  
20 that's a document that says Page 2 of three.

21 Did you provide Page 1 and page 3?

22 MS. JOHNSON: I would not have, Judge, if it  
23 was part of the victim's narrative.

24 MR. SCHECHTER: No, I did not get it.

25 MS. JOHNSON: And Page 3, I believe, is the

1                   one I showed counsel that's blank.

2                   MR. SCHECHTER: That's a different report,  
3                   Judge. That Page 3 that was blank was the arrest  
4                   report.

5                   THE COURT: Well, I have no idea what I'm  
6                   looking at.

7                   MR. SCHECHTER: I don't either, Judge, and  
8                   that's why I'm raising this to the Court.

9                   THE COURT: Do you see what he's handed up to  
10                  the Court, Ms. Johnson?

11                  MR. SCHECHTER: I showed it to her, I  
12                  believe, Judge.

13                  MS. JOHNSON: I'm pulling out -- I have a  
14                  full copy of the detective's case jacket, so let me  
15                  take a look.

16                  (Pause in the proceedings.)

17                  MS. JOHNSON: What he just handed up to the  
18                  Court was Page 2 of the complaint report, Page 1 being  
19                  what your Honor had looked at where it said at  
20                  time/place of occurrence, crime victim walked inside of  
21                  105th Precinct.

22                  So here is Page 2 of that three-page  
23                  complaint report. Page 3 already being provided to  
24                  counsel which indicates the defendant's information and  
25                  a portion where it says crime data and details. So

1                   this is Page 2 of the complaint report.

2                   MR. SCHECHTER: I think -- may I see that,  
3                   please?

4                   (Shown to counsel.)

5                   MR. SCHECHTER: I believe counsel is mistaken  
6                   and I would like to show you why.

7                   She had alluded to the fact Page 1 of three  
8                   is that narrative. She's referring to the complaint  
9                   report.

10                  This is another complaint report. If you  
11                  look at Page 2 of three, which is the one I have here,  
12                  it's completely different.

13                  MS. JOHNSON: There's more than one complaint  
14                  report, that's why.

15                  MR. SCHECHTER: It's not the same first page  
16                  for both reports, counsel, is what I'm saying.  
17                  page 1 is different for each one. And there's no  
18                  Page 3 here either. All I have is two of three on this  
19                  particular item.

20                  Just so that the record is clear, the  
21                  document I'm referring to has information concerning  
22                  the complainant which is blacked out on the top and in  
23                  one of the boxes it says reporter, colon, a number  
24                  sign, one of one and then again it appears to be  
25                  information about the complainant which is blacked out

1 and then underneath that, wanted number, one of one, it  
2 refers to a male, five feet nine inches tall, my  
3 client's name, but that's all there is on this document  
4 and I have no idea what it relates to.

5 Certainly, the Page 1 alluded to by counsel  
6 cannot possibly relate to the same complaint report.

7 MS. JOHNSON: Judge, I have them both in  
8 front of me.

9 THE COURT: This is part of what was handed  
10 over, I think, last week.

11 I've got Page -- it starts off with -- it's a  
12 legal size copy. It says Page 2 of three.

13 MR. SCHECHTER: Is that the one that's  
14 blacked out on the top and the sex box?

15 THE COURT: No, it's not blacked out.

16 MR. SCHECHTER: Two of three I have --

17 THE COURT: But then at the bottom of the  
18 first it says end of complaint report.

19 MR. SCHECHTER: Is your Honor referring to --

20 THE COURT: Excuse me.

21 MR. SCHECHTER: I'm sorry.

22 THE COURT: So then I go to the next page,  
23 there's another two of three.

24 MR. SCHECHTER: Yes.

25 THE COURT: That has -- at the top it says --

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1       there starts to be some blacked out items. Then it  
2       says reporter, one of one.

3                    MR. SCHECHTER: Right.

4                    THE COURT: There's a name that's blacked out  
5       next to that.

6                    MR. SCHECHTER: Yes.

7                    THE COURT: Then it refers to a male, which  
8       I'm assuming is the defendant.

9                    MR. SCHECHTER: My client's name is there,  
10      Judge.

11                  But I'm saying I don't have anything --

12                  THE COURT: Then it goes to Page 3 of three  
13      and then it says end of complaint report.

14                  So you've got --

15                  MS. JOHNSON: Because there was two complaint  
16      reports generated, your Honor, one that was printed  
17      probably from the PD website and one that was printed  
18      from the internal computer which is why he has two  
19      copies.

20                  One of them -- both of them begin the same  
21      way. One has more information than the other, but the  
22      information as to the defendant has all been provided.

23                  If your Honor wants to take a look I'll show  
24      you both of the reports, but everything that's --

25                  THE COURT: Let me just tell you this.

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1                   The Page 2, if you will, of two of three, as  
2 I indicated, I have two of them.

3                   MS. JOHNSON: Yes.

4                   MR. SCHECHTER: Right.

5                   THE COURT: They're two different pages.

6                   MS. JOHNSON: Yes, because there's two  
7 complaint reports, so both were turned over.

8                   THE COURT: So both were what?

9                   MS. JOHNSON: Both were put in the packet  
10 because there was two complaint reports that were  
11 generated.

12                  MR. SCHECHTER: Well, I only have, as I said,  
13 two of the three of them on one and only one of the  
14 three on the other, the second page.

15                  I have nothing regarding Page 1 and 3 of the  
16 one we're talking about now, Judge.

17                  THE COURT: Where is the Page 1 of -- where  
18 is Page 1 of -- you're telling me that there's two  
19 complaint reports that get generated?

20                  MS. JOHNSON: I'm looking at them right here,  
21 Judge.

22                  Both of the complaint reports, both Page 1,  
23 have the narrative involving the complainant. Both of  
24 them start the same, have the same information, the  
25 occurrence location, occurrence from, classification

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1 and the narrative.

2 THE COURT: Now, that hasn't been provided as  
3 part of the Rosario, yes?

4 MR. SCHECHTER: Has not.

5 MS. JOHNSON: That has not. There was no  
6 information in there other than the victim's  
7 information and the narrative.

8 THE COURT: Is that what I just looked at a  
9 moment ago?

10 MS. JOHNSON: Yes, Judge.

11 THE COURT: So I ruled that that appeared,  
12 from my standpoint, to be dealing just with statements  
13 the complainant may have made.

14 MS. JOHNSON: Page 2 with regards to both  
15 complaint reports has the reporter information and the  
16 wanted information and the defendant's personal  
17 information that counsel has in his hands right now, in  
18 his left hand.

19 MR. SCHECHTER: Right. That's the first one.  
20 We already disposed of that.

21 I'm talking about the second one with the  
22 blackened out material Page 2 of three. I don't know  
23 what three of three is on that.

24 MS. JOHNSON: Page 3 is exactly the same as  
25 Page 2 of the other report.

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1                   THE COURT: Well, there's a three of three  
2                   that I have and that's where it says end of complaint  
3                   report.

4                   MS. JOHNSON: Yes, Judge. That is the same.  
5                   In fact, it has less information than Page 2 of 3.

6                   If counsel wants to just take a look at it, I  
7                   mean, I'll show it to him, but he has it.

8                   THE COURT: Let me ask you this.

9                   Why was there two Page 2s, if you will,  
10                  generated out of a complaint report?

11                  MS. JOHNSON: I believe it's because when  
12                  they generate the reports, once the supervisor approves  
13                  them more information is put at the bottom, which is  
14                  why Page 2 of the other report has all the supervisor's  
15                  information. It's sort of like the unauthorized versus  
16                  authorized.

17                  So they both have all the exact same  
18                  information, it's just lined up on the page differently  
19                  and the final report has the sergeant's name.

20                  THE COURT: Can I just see these?

21                  MS. JOHNSON: Sure.

22                  THE COURT: Because you make it very, very  
23                  difficult when you start, you know, extracting, you  
24                  know, pages out because it becomes apparent that there  
25                  looks like there are things that are missing.

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1 I'm not claiming anyone is doing it  
2 intentionally.

3 MS. JOHNSON: What I should have done was  
4 give all the pages with redactions instead of pulling  
5 the pages out.

6 THE COURT: Right.

7 MS. JOHNSON: So I'm going to give the Court  
8 all of the complaint reports that I have.

9 MR. SCHECHTER: I have a few other issues,  
10 Judge, but let's get through this first.

11 MS. JOHNSON: I'm sorry, here is the first  
12 page that your Honor already looked at.

13 (Shown to Court.)

14 THE COURT: All right, this I've seen.

15 (Pause in the proceedings.)

16 THE COURT: Well, you know what I'm going to  
17 direct the People to do because, quite frankly, this  
18 shouldn't be me doing this, I'm going to direct the  
19 People to put together whatever these complaint reports  
20 are, whatever order they were in in terms of the pages.

21 MS. JOHNSON: Of course.

22 THE COURT: Whatever you feel you need to  
23 redact, I want you to indicate that to me.

24 MS. JOHNSON: Okay.

25 MR. SCHECHTER: Your Honor, I'm truly

1                   THE COURT: Well, there's a three of three  
2                   that I have and that's where it says end of complaint  
3                   report.

4                   MS. JOHNSON: Yes, Judge. That is the same.  
5                   In fact, it has less information than Page 2 of 3.

6                   If counsel wants to just take a look at it, I  
7                   mean, I'll show it to him, but he has it.

8                   THE COURT: Let me ask you this.

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10                  generated out of a complaint report?

11                  MS. JOHNSON: I believe it's because when  
12                  they generate the reports, once the supervisor approves  
13                  them more information is put at the bottom, which is  
14                  why Page 2 of the other report has all the supervisor's  
15                  information. It's sort of like the unauthorized versus  
16                  authorized.

17                  So they both have all the exact same  
18                  information, it's just lined up on the page differently  
19                  and the final report has the sergeant's name.

20                  THE COURT: Can I just see these?

21                  MS. JOHNSON: Sure.

22                  THE COURT: Because you make it very, very  
23                  difficult when you start, you know, extracting, you  
24                  know, pages out because it becomes apparent that there  
25                  looks like there are things that are missing.

1 cognizant and I appreciate the Court's direction,  
2 however, for the life of me, I don't understand why  
3 counsel just, since I'm going to require them  
4 eventually anyway, provide me with the Rosario material  
5 for the witnesses so we could avoid all this.

6 THE COURT: That would seem to be the easiest  
7 way of dealing with it, which I recognize.

8 I'm not going to force the People -- having  
9 said that, I'm not going to force them to give over  
10 Rosario, at least with respect to the first page.

11 In all fairness, I don't think they're  
12 entitled -- or required, at this point, to provide to  
13 you.

14 I understand your point.

15 MR. SCHECHTER: All I'm saying, your Honor,  
16 is all this does is exacerbate the length of time and  
17 the delay in this case because I then have to look at  
18 this stuff.

19 MS. JOHNSON: I'll give him everything. I'll  
20 just redact the narrative, that's what I'll do, if I  
21 could use the copy machine I'll make copies for  
22 everyone.

23 THE COURT: Yes.

24 MR. SCHECHTER: Before she goes, there's  
25 more.

1                   THE COURT: What else is there,  
2                   Mr. Schechter?

3                   MR. SCHECHTER: The complaint follow-up  
4                   reports, I was given two of them.

5                   Now, I would direct the Court's attention to  
6                   the right side of the top of the page, the second box  
7                   down, it says follow-up number.

8                   I have follow-up Number 3 and I have  
9                   follow-up complaint report Number 4.

10                  I do not have follow-up Number 1 or Number 2.

11                  MS. JOHNSON: Can I take a look at that?

12                  MR. SCHECHTER: Sure.

13                  (Shown to counsel.)

14                  MS. JOHNSON: Which ones are you missing?

15                  MR. SCHECHTER: I don't have follow-up report  
16                  Number 2 or 1, complaint follow-up reports Number 1 and  
17                  2.

18                  MS. JOHNSON: I have those. They're exactly  
19                  the same.

20                  If he wants I'll give him a copy -- and you  
21                  don't have 4?

22                  MR. SCHECHTER: Number 1, I don't have.

23                  MS. JOHNSON: I'll give them to him. They're  
24                  the same. If anything, they're missing information  
25                  that was provided to him in the other ones.

1                   THE COURT: So give it to him.

2                   MS. JOHNSON: That's fine.

3                   THE COURT: What else Mr. Schechter?

4                   MR. SCHECHTER: If the Court please, I do not  
5 have a copy of the activity log which, in my  
6 understanding, is routinely filled out by the police  
7 officer, including the desk sergeant's note of entries  
8 as to when my client came into the precinct, which is  
9 required when someone comes into the precinct and  
10 arrested. There's always a log entry made of it. I  
11 don't have that. It's very important in the context of  
12 this case.

13                  I did not see complaint report entitled  
14 Police Department PD 313-152, which is a complaint  
15 report. Now, Police Department documents are normally  
16 numbered in that kind of way. I did not see that  
17 document.

18                  I did not see the New York State standardized  
19 domestic incident report. That is called DCJS 3221.  
20 That is mandated by Police Department regulations  
21 procedure Number 208-36.

22                  Counsel had indicated, I think, that report  
23 of suspected child abuse form was not filled out  
24 because ACS was at the precinct.

25                  However, Police Department regulations

1 require that PD 377-154, which is report of suspected  
2 child abuse, if same is done, must be prepared.

3                   Additionally, the report to the patrol  
4 supervisor, I have not gotten that.

5                   The domestic report incident log, I did not  
6 get that.

7                   Now, I don't know if an online booking system  
8 arrest work sheet was done. If so, I have not gotten  
9 that.

10                  And I think we've ascertained, and I'm going  
11 to ask the police officer if he knows, whether the  
12 commander had, in fact, told him he was going to make a  
13 recommendation for a commendation in his record. That  
14 we have to ascertain on the witness stand.

15                  But those other documents I haven't gotten,  
16 Judge.

17                  MS. JOHNSON: Judge, the DIR and the  
18 complaint reports will be disclosed at trial. It's all  
19 narrative with regards to the complainant.

20                  I'm looking now at some of the documents  
21 counsel had requested, including the complaint  
22 follow-up report Number 1.

23                  Judge, this I'm going to ask the Court, if  
24 the Court wants to review it, that I not turn it over.  
25 It's Detective Schulman 's follow-up report. It is all

1           about the contact with ACS and conversations with the  
2           complainant and his conversations with a detective. It  
3           has nothing to do with the defendant's statements.  
4           It's all about conversations with the victim and  
5           adult -- I don't know if it's CPS or --

6           THE COURT: Can I see it?

7           MS. JOHNSON: Of course.

8           THE COURT: What about the activity log  
9           Mr. Schechter spoke about first?

10          MS. JOHNSON: Detective Schulman does not  
11          generate information into that activity log. I had  
12          asked him before, in fact, if there was, like a time  
13          log, like the PD has here?

14          THE COURT: Right.

15          MS. JOHNSON: He says that if it does get  
16          generated it gets done by either the desk sergeant --  
17          it was not done by the officer and it was not done by  
18          this detective.

19          He said there is no formal log like we have.  
20          Sometimes there's a card that gets filled out, but he  
21          did not prepare one and, according to my conversations  
22          with Officer Alfaro, she did not prepare one either.

23          MR. SCHECHTER: Here's the problem.

24          Detective Schulman was not the arresting officer nor  
25          was he the first one on the scene when my client came

1 into the precinct.

2                   The time when my client came into the  
3 precinct is an important issue in this matter. It is  
4 my understanding that Sergeant O'Hagan being the desk  
5 sergeant who participated in the arrest, according to  
6 this complaint follow-up sheet, had to complete this  
7 documentation and put down the time that my client came  
8 into the precinct and when the arrest took place.

9                   Short of subpoenaing Sergeant O'Hagan, I want  
10 that desk log -- desk book. Any time someone comes  
11 into the precinct there's a desk entry made of it.  
12 There has to be by New York City police regulation. I  
13 need the time when that happened.

14                  THE COURT: All right, is Detective Schulman,  
15 Ms. Johnson, saying that there was no recording of when  
16 the defendant came into the precinct?

17                  MS. JOHNSON: He doesn't have any -- he  
18 didn't prepare anything and he didn't generate anything  
19 into a logbook.

20                  The way he knows the time is based on, like  
21 when he testified the sergeant came to him to tell him  
22 that the defendant had walked into the precinct. So  
23 whether or not the sergeant generated one, I don't  
24 know. I haven't spoke to the sergeant.

25                  THE COURT: Well, it would seem to me,

1                   particularly since we've just now watched the videotape  
2                   that was taken of the defendant, that appears to be  
3                   done sometime, I think, in the late 5 afternoon on the,  
4                   I think, the 24th of June.

5                   It sounded as though, you know, in our  
6                   conference when the case initially came over, that  
7                   there's going to be some claim made, I'm assuming, that  
8                   these statements were somehow involuntarily made or the  
9                   product of some type of coercion, duress, etcetera.

10                  MR. SCHECHTER: Yes.

11                  MS. JOHNSON: Which is why I was going to say  
12                  to your Honor that I anticipate now, based on counsel's  
13                  arguments, if I have to call the sergeant as a witness  
14                  at the hearing I will advise him to bring any log that  
15                  exists.

16                  THE COURT: Well, I think whether or not you  
17                  call the sergeant or not, it would be my position that  
18                  Mr. Schechter is entitled to that activity log,  
19                  particularly given the fact that we're talking about at  
20                  least a 12-hour time period that the defendant is in  
21                  the custody of the police department or 105th Precinct  
22                  and I would direct the People provide that.

23                  MS. JOHNSON: Yes, Judge.

24                  MR. SCHECHTER: Thank you, Judge.

25                  MS. JOHNSON: As to the complaint follow-up,

1 follow up Number 2 --

2 MR. SCHECHTER: 1 and 2. I believe you  
3 said --

4 MS. JOHNSON: I believe your Honor has 1 in  
5 his hands.

6 THE COURT: I have complaint follow-up  
7 Number 1, yes. I have follow-up Number 1.

8 MS. JOHNSON: Follow-up Number 2 I have is  
9 all regarding contact with the complainant conversation  
10 with the complainant, narrative about the interview  
11 with the complainant, nothing about contact with the  
12 defendant.

13 I'll provide that to your Honor as well.

14 (Shown to Court.)

15 MS. JOHNSON: Would your Honor like me to go  
16 and make copies of the arrest reports?

17 THE COURT: Yes, please.

18 (Pause in the proceedings.)

19 MS. JOHNSON: Your Honor, I gave counsel, I  
20 handed up a copy to the Court, I didn't even bother  
21 redacting -- he now has all the complaint reports and  
22 arrest reports. I now have Detective Schulman outside  
23 calling the 105 command pulling the log for that day.  
24 He has my fax number. If he has it before the end of  
25 the hearing today he will fax that over.

1                           MR. SCHECHTER: While we're on it, now that  
2 we have this material - I thank counsel for providing  
3 me this material - did she ascertain whether or not a  
4 domestic incident report was done as per the procedure  
5 regulation that I outlined or whether a --

6                           THE COURT: Was there a DIR report done?

7                           MS. JOHNSON: Yes, Judge, it's in my file.

8                           It's the narrative of the complainant -- it's her 32B.

9                           THE COURT: Do you want to hand it up to me?

10                          MS. JOHNSON: Sure.

11                          THE COURT: Insofar as the complaint  
12 follow-up reports, I've had an opportunity to look at  
13 them, Mr. Schechter. They are, for the most part,  
14 interviews with the complainant and the ACS worker or  
15 investigator, I should say, and hospital -- someone at  
16 a hospital that the complainant treated at on  
17 June 24th.

18                          They would not appear to me, at this point,  
19 to be Rosario for any of these witnesses.

20                          (Shown to Court.)

21                          THE COURT: Can you just give this back to  
22 the DA?

23                          (Shown to counsel.)

24                          THE COURT: Now, what did you hand up to me  
25 now?

1 MS. JOHNSON: The four-page DIR, your Honor.

2 I believe it's four pages.

3 THE COURT: And, likewise, Mr. Schechter,  
4 with the domestic incident report, it appears as though  
5 that it is, as the People represent, a 32B of the  
6 complainant in this case as well as another police  
7 officer that actually generated the narrative report on  
8 the front of it.

9 It's not Detective Schulman or  
10 Detective Alfaro, so -- and I would not consider it to  
11 be Rosario at this time.

12 Anything else?

13 MR. SCHECHTER: Not at this time, your Honor.  
14 I believe the officer is checking out the  
15 activity log.

16 Is that what we're waiting on?

17 THE COURT: Well, we're not waiting on it.  
18 He's going -- I believe he called the 105 Precinct. If  
19 you need him back for further cross, I'll certainly  
20 direct the People to do that.

21 MR. SCHECHTER: Okay.

22 THE COURT: Can I just ask the People one  
23 question?

24 And I appreciate, Ms. Johnson, you were on  
25 trial for, I think it was, close to a month.

1 MS. JOHNSON: April 1st to the 30th.

2 THE COURT: Was there any indication or  
3 representation made before this case came to this part  
4 that you had or had not had an opportunity to gather  
5 this Rosario material in this case and go over it with  
6 the police officers?

7 MS. JOHNSON: Could we go off the record for  
8 a minute?

9 THE COURT: No, I would like to have it on  
10 the record.

11 MS. JOHNSON: Judge, my --

12 THE COURT: Because at this point it appears  
13 to me that, you know, this matter is not ready for  
14 hearing in the sense that we're now spending more time  
15 going over Rosario material than we are going over  
16 testimony at this point.

17 MS. JOHNSON: Your Honor, my verdict came in  
18 on Tuesday, April 28th.

19 On the 29th my case was on before  
20 Judge Donnino for a conference. I was not at work on  
21 the 29th.

22 When I came into work on the 30th I was  
23 advised I was having a hearing and police officers and  
24 detectives were going to be in my office at 2 o'clock  
25 in the afternoon for purposes of hearing.

1                   THE COURT: And prior to that time is the  
2 first time you started gathering Rosario material in  
3 the case or somebody from your office gathered Rosario  
4 material --

5                   MS. JOHNSON: I had some of the Rosario  
6 material at the time of grand jury, but obviously  
7 because there was another DA's Office that was handling  
8 the other matter I did not have a complete detective's  
9 jacket at the time of grand jury.

10                  What I had was some of the complaint reports,  
11 some of the arrest reports. I did not have everything  
12 at the time. That's why I had the DA's Office from  
13 Queens faxing over stuff to my office yesterday  
14 because --

15                  THE COURT: So that is actually -- some of  
16 this Rosario material is coming from the Queens DA's  
17 Office, not necessarily the Police Department.

18                  MS. JOHNSON: Oh, yes. I did not have all of  
19 it. Whatever was in Shulman's case jacket I had almost  
20 all of it at the time of grand jury and all of that was  
21 turned over last week when we came here for the  
22 hearing.

23                  But the stuff that was turned over today,  
24 such as some of the property invoices, I got that from  
25 the from the arresting officer this morning.

1                    Apparently, the way the NYPD handles their  
2 paperwork, is unlike Nassau. Everything isn't in the  
3 case jacket. The arresting officers have their own  
4 files, which is why this morning, I apologize for not  
5 being here at 9:30, a lot of this online booking  
6 information I got this morning. I had never seen or  
7 spoken to the arresting officer.

8                    THE COURT: Well, when the matter was sent  
9 out for hearing on the -- was it the 28th or the 29th?

10                  MS. JOHNSON: It had been sent out before  
11 then, but I was on trial so we were sent back to  
12 Judge Donnino on the 29th when I was out of the office  
13 that day.

14                  THE COURT: All right, Mr. Schechter,  
15 obviously you may have been more privy to what was  
16 going on before this matter went out.

17                  Was there any discussions during the  
18 conferencing of this case that -- about the Rosario  
19 material and whether or not all this material was going  
20 to be available prior to the hearing being started  
21 instead of it being doled out, as it is now, by  
22 piecemeal?

23                  MR. SCHECHTER: I was directed by  
24 Judge Donnino to make this application before your  
25 Honor.

1                   THE COURT: What application?

2                   MR. SCHECHTER: Any Rosario issues were to be  
3                   made before your Honor.

4                   MS. JOHNSON: When I was on trial there was  
5                   one day in the middle of my trial when I met with  
6                   Mr. Schechter in Judge Donnino's chambers and there was  
7                   issues coming up about the Rosario.

8                   I had advised Judge Donnino in  
9                   Mr. Schechter's presence I had not yet received a  
10                  complete Queens DA's file that had Rosario material.

11                  Mr. Schechter raised the issue and said he  
12                  believed it was Rosario and I agreed with Mr. Schechter  
13                  that not only was it Rosario, but obviously for trial I  
14                  would want a complete file.

15                  This conversation happened, I believe, two  
16                  weeks ago while -- or maybe a week ago while I was on  
17                  the trial with the other matter.

18                  MR. SCHECHTER: Several -- counsel is  
19                  correct. Several of these issues were raised before  
20                  Judge Donnino while counsel was in the middle of trial  
21                  and came by to try to, at least, answer on behalf of  
22                  her office, you know, when this case was called.

23                  But since she was in the middle of a trial  
24                  she just had no means of securing all of this  
25                  documentation at this point.

1                   THE COURT: And when it was, on the 28th, you  
2 were, what, still on trial?

3                   MS. JOHNSON: My verdict came in on the 28th  
4 around 4:30, I believe. It was way after lunch.

5                   MR. SCHECHTER: My issue is not with counsel,  
6 your Honor, my issue is with her office. Her office  
7 should have done everything possible to have this  
8 material available for her.

9                   MS. JOHNSON: Your Honor, we had --  
10                  Judge Donnino knew that I was on trial. When we were  
11                  on in his part we were told we were going from hearing  
12                  directly into trial --

13                  THE COURT: Let me ask you this.

14                  The two weeks you said before -- when you  
15                  were in Judge Donnino's part two weeks before this case  
16                  got sent out, did he or somebody from his office tell  
17                  you at that time that on April 29th this thing is going  
18                  out for hearing and trial?

19                  MS. JOHNSON: He actually told me that on  
20                  April 27th because he assumed I was going to have a  
21                  verdict that day and while I was in chambers in the  
22                  presence of counsel my exact words were, "Judge, I  
23                  would like to have a day to catch my breath," and I  
24                  took off the next day and I came back and we were  
25                  scheduled for hearings.

1                   THE COURT: So when was the first time you  
2 found out that this thing was going to hearings and  
3 trial?

4                   MS. JOHNSON: Sometime in April.

5                   THE COURT: You have to narrow it down a  
6 little bit.

7                   MS. JOHNSON: I don't know because I was on  
8 trial the whole month of April and when I had indicated  
9 that I didn't know at that time what my witnesses'  
10 availability was, Judge Donnino insisted it was going  
11 from hearing to trial.

12                  When we had this conversation, I didn't have  
13 all the Rosario material, I didn't have all the  
14 paperwork and I was on trial, I couldn't get it all at  
15 that time.

16                  THE COURT: Well, you know, as I indicated,  
17 we're now spending more time trying to figure out what  
18 Rosario material has been generated, what Rosario  
19 material has been turned over, all of which I would  
20 think, to a certain extent -- I understand there's  
21 going to be Rosario material that may come available as  
22 you're speaking to witnesses, I mean, that's to be  
23 expected.

24                  I mean at this point, since I understand and  
25 I'm not finding fault with you, necessarily, that

1           there's another jurisdiction that's involved, you may  
2           not be familiar with the type of paperwork and material  
3           that they generate, but, you know, certainly your  
4           supervisors, who I have enormous amount of respect for,  
5           both came out of the Queens DA's office, I would think  
6           more than anybody, they would be familiar with the fact  
7           that, look it, this material is going to have to be  
8           gathered and ready to be distributed, there's going to  
9           be applications to have it redacted.

10           MS. JOHNSON: And, in defense of them, when I  
11           was out on Wednesday they did contact and arrange for  
12           the detective, the officer, to come, which is how it  
13           was that I knew that they were subpoenaed before. They  
14           contacted the Queens DA, but --

15           THE COURT: Let me ask you, did you know  
16           during the course of your trial that as soon as you got  
17           off trial in your other case you were going to be  
18           going into hearings and trial?

19           When did you find that out?

20           You still haven't answered that.

21           MS. JOHNSON: We were told by Judge Donnino  
22           we were going from hearings into trial.

23           However --

24           THE COURT: When?

25           MS. JOHNSON: I don't know when it was.

1                   However, as your Honor knows, I was in the  
2 middle of pretrial in another matter, People versus  
3 Mark Hercules.

4                   When Judge Donnino put me on trial with the  
5 last trial I was on, I reminded the Court that I had  
6 back-to-back trials that were scheduled with an  
7 incarcerated defendant and this matter had been sent  
8 there.

9                   His honor, Judge Donnino, had indicated to  
10 me, "You're going to try that other case first," and  
11 trials got backed up.

12                  Because of that, Mark Hercules was assigned  
13 to another prosecutor in anticipation of, per Judge  
14 Donnino, this case going to trial first.

15                  When we were -- when he advised we were going  
16 directly from hearing into trial, I believe the first  
17 time that happened was in April while I was on trial.

18                  THE COURT: And what did you do when he told  
19 you that?

20                  MS. JOHNSON: I had advised him, Judge, going  
21 hearing into trial, I said, "Judge, I don't know if  
22 personally I am going to be ready. I don't know if  
23 myself I could be ready," but I was on trial and, in  
24 fact, we had another control date which on -- because I  
25 did take notes of this because I was concerned that

1 something would happen.

2 THE COURT: Like this would happen?

3 MS. JOHNSON: On April 16th we conferred  
4 the case with Judge Donnino and counsel in chambers and  
5 was marked control for trial April 22nd.

6 The Court also indicated the Court wanted an  
7 April 28th trial as his Honor had indicated I would  
8 probably have a verdict by then, which I did not.

9 In fact, I was still on trial that full day  
10 of the 28th.

11 On April 27th we were back in chambers and I  
12 advised the Court that I needed to check the  
13 availability of the New York City police officers and  
14 the Court indicated -- actually, while we were in  
15 chambers the Court indicated we were going directly  
16 from hearing to trial.

17 Then when we went on the record I advised the  
18 Court I did not know my witnesses' availability as I  
19 did not have control over them because they were  
20 New York City police officers. The Court had forgotten  
21 about that. This was all before my verdict came in.

22 Then the Court put it on, I believe, for  
23 control on the 29th --

24 THE COURT: And on the 28th you got your  
25 verdict.

1 MS. JOHNSON: I think at 4:30 or late in the  
2 afternoon and, in fact, while counsel was in chambers I  
3 had said to the Court, and the Court didn't have a  
4 problem with the fact, that I was going to ask for a  
5 couple of days to get everything together.

6 I don't know if the Court meant a couple of  
7 days for the hearing or a couple of days from hearing  
8 into trial, but I believe counsel was also there when  
9 my exact words were, "Judge, I want a couple of days to  
10 catch my breath to get everything together because,  
11 again, I don't know my witnesses' availability."

12 THE COURT: Well, then when did you start  
13 gathering the Rosario material?

14 MS. JOHNSON: I had some stuff at the time of  
15 grand jury. Everything else I got on Thursday the  
16 30th, when the detective came in with his case jacket  
17 on that same day.

18 THE COURT: At that point you had been sent  
19 out for hearings at that point because we started this  
20 on the 30th.

21 MS. JOHNSON: Yes, Judge. The detective was  
22 subpoenaed, came to my office around 1 o'clock, I  
23 copied his case jacket and we began the hearings in  
24 that afternoon.

25 Today was the first day I met with

1                   Officer Alfaro to gather her Rosario material that I  
2                   provided to counsel.

3                   Friday as well, I believe, whatever the time  
4                   of the fax is, was the first time I received the  
5                   Rosario that was from the Queens DA's Office.

6                   I had requested a day or two adjournment  
7                   through my office, if it would be possible, and I don't  
8                   know what conversation transpired between my bosses and  
9                   Judge Donnino, but apparently an adjournment was not a  
10                  possibility.

11                  THE COURT: Okay.

12                  Mr. Schechter, does that square with what --  
13                  I know you're more concerned, and justifiably so, about  
14                  making sure you get everything you're entitled to.

15                  MR. SCHECHTER: The minutia of our  
16                  conversation with Judge Donnino, I don't recall every  
17                  one, but I do know Judge Donnino was very, very  
18                  strongly pushing this matter forward for trial and was  
19                  not really sympathetic with any adjournments and kept  
20                  this matter on a very tight leash, adjournments no more  
21                  than a week at a time, so that we could monitor  
22                  counsel's trial and what was happening.

23                  So I do know that Judge Donnino was pushing  
24                  this very strongly for trial.

25                  I do not have -- there's a few other things I

1 have here from counsel (sic).

2 I don't have external photos of subject's  
3 vehicle which apparently were taken, meaning my  
4 client's car, which is relevant to this hearing.

5 And Shulman has memo book entries, I have  
6 those, but I don't know if these are the same as the  
7 handwritten notes because they make reference to  
8 Shulman's handwritten notes. I don't know if they're  
9 the same thing or not, but certainly I would be  
10 entitled to those things as well.

11 MS. JOHNSON: Judge, one other thing that  
12 occurred during our conferencing was that there was  
13 significant -- I don't want to speak for counsel, but  
14 there was significant agreement on both my part and  
15 counsel's part that it would be more appropriate for  
16 the Queens matter to occur first and obviously  
17 Mr. Schechter, correct me if I'm wrong, that was  
18 certainly not a possibility.

19 THE COURT: Well, you know, look it, I can  
20 appreciate being on trial for the length of time that  
21 you were, but unlike perhaps, Mr. Schechter, and I  
22 don't even know whether he is or is not, you're not a  
23 solo practitioner, you have an office, you have staff.

24 It sounds as though, to me, that the alarm  
25 bells were being run while you were in the middle of

1           that other trial and, you know, certainly to be now in  
2           the middle of this hearing and be getting stuff while  
3           witnesses are on the witness stand, and I'm not talking  
4           about a page here or a page there, I'm talking about in  
5           excess of ten or 15 pages that you handed over this  
6           morning, you know, really shouldn't be happening and,  
7           you know, at this point, the way things are going, I  
8           figure we'll be doing this hearing for the rest of this  
9           week.

10           So I'll try to move it along, but to me the  
11          way this thing is -- as I said, more discussion about  
12          Rosario material and we haven't even gotten to the  
13          cross-examination of one witness yet.

14           You're now indicating you may be wanting to  
15          call a third witness in the case. You don't know  
16          whether or not he or she has generated Rosario  
17          material.

18           We'll have to deal with the schedule as  
19          things go on, but I'm just a little bit perplexed about  
20          how ready this thing really is, quite frankly.

21           MR. SCHECHTER: There's another interesting  
22          issue, I find it interesting anyway, and that is the  
23          issue as to if my client does testify in this matter,  
24          the extent and parameters of the cross-examination.

25           My client has a prior disorderly conduct and

1           that is -- a Sandoval application has to be made before  
2           your Honor with respect to that one prior. It's a  
3           disorderly conduct. I think it was on a shoplift  
4           several years ago, which has nothing to do with this  
5           case.

6           Additionally, if the Court recalls, the  
7           motion in limine that I submitted to the Court citing,  
8           I think, two Court of Appeals opinions and a lower  
9           court opinion with respect to the use of  
10          currently-charged allegations, which are proscribed by  
11          the Court of Appeals, would also affect what elements  
12          of the confession should be -- were the Court to  
13          consider that the confessions were legally obtained,  
14          what parts of the confessions would be utilized because  
15          the Court -- because counsel can't do indirectly what  
16          she can't do directly; namely, she can't cross-examine  
17          him about pending cases and therefore she can't put in  
18          on her direct examination the information concerning  
19          pending cases.

20          So what we're going to need to do is an in  
21          limine hearing or conference to determine what, if any,  
22          parts of that confession could be introduced.

23          THE COURT: And I'm aware of it, I'm  
24          sensitive to it. My law secretary is looking at the  
25          material. Obviously, you gave it to me this morning

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1 and I haven't even had a chance to look at it.

2 Insofar as your client testifying at the  
3 hearing, I'm not of a mind-set to allow some type of  
4 freewheeling cross-examination that's going to go  
5 beyond the parameters of what you elicited on your  
6 direct examination and you can be guided accordingly  
7 with that.

8 MR. SCHECHTER: Okay.

9 THE COURT: So, in the meantime, let's get  
10 Detective Shulman up here.

11 (Witness resumes the stand.)

12 MS. JOHNSON: Your Honor, Detective Shulman  
13 just advised me the logbook is being faxed over to my  
14 office.

15 THE COURT: Okay, great.

16 THE WITNESS: Good afternoon, your Honor.

17 THE COURT: Good afternoon.

18 All right, Mr. Schechter, whenever you're  
19 ready.

20 MR. SCHECHTER: May it please the Court,  
21 counsel.

22 CROSS-EXAMINATION

23 BY MR. SCHECHTER:

24 Q. Detective Shulman, good afternoon.

25 Detective Shulman, what is your age?

ws

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1                   How old are you?

2                   A.     Thirty-seven.

3                   Q.     And you indicated that you were a police officer  
4 for 15 years?

5                   A.     A little over that, yes.

6                   Q.     Did you have any occupation before you were a  
7 police officer?

8                   A.     Part-time work. I wouldn't say career.

9                   Q.     What did you do before you became a police  
10 officer?

11                  A.     I was a security guard in Maryland.

12                  Q.     How long did you have that job?

13                  A.     Year and a half, maybe.

14                  Q.     Are you a native New Yorker or do you come from  
15 Maryland?

16                  A.     I'm a native New Yorker.

17                  Q.     Okay, and you've indicated you had some training  
18 at the academy with respect to interrogation of prisoners  
19 and interviews of complainants and things of that nature,  
20 would that be fair to say?

21                  A.     I don't know if I've indicated to that, but that  
22 would be accurate, though.

23                  Q.     Did you -- were you taught the Reid method of  
24 interrogation, R-e-i-d?

25                  A.     Not that I can specifically say.

ws

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1 Q. You spent how many years in anti-crime?

2 A. Almost five in a citywide anti-crime unit.

3 Q. Was that any specific detail, narcotics related or  
4 street muggings?

5 What, specifically, were your assignments there?

6 A. Violent street crimes.

7 Q. And in the times that you were an anti-crime  
8 officer were you working under a silver shield or a gold  
9 shield?

10 MS. JOHNSON: Objection.

11 THE COURT: Yes.

12 MR. SCHECHTER: I'll rephrase.

13 Q. Were you a detective or patrolman?

14 A. I was both at varying different times.

15 Q. Well, were you first a patrolman and then a  
16 detective or were you a patrolman, detective, patrolman?

17 How did that work?

18 A. I was a patrolman and then I was promoted to  
19 detective.

20 Q. While on the anti-crime unit?

21 A. Yes.

22 Q. And in your duties as an anti-crime officer did  
23 you have occasion to utilize informants?

24 MS. JOHNSON: Objection.

25 THE COURT: Yeah, sustained.

ws

1           Q. Did you become accustomed to being able to turn  
2         people into informants by virtue of your experience and your  
3         training?

4           MS. JOHNSON: Objection.

5           THE COURT: Yeah, sustained.

6           Q. Approximately what percentage of your arrests  
7         generated confessions and inculpatory statements, detective?

8           MS. JOHNSON: Objection.

9           THE COURT: As?

10          Q. As an anti-crime officer?

11          THE COURT: If you know.

12          A. I don't know that I could answer that.

13          Q. Would it be more than 10 percent?

14          THE WITNESS: I honestly don't know that I  
15         could put a number on it, your Honor?

16          THE COURT: Okay.

17          Q. How many times have you testified in court?

18          MS. JOHNSON: Objection.

19          THE COURT: I'll allow that.

20          You can answer that.

21          A. Again, I don't know that I could put a number on  
22         it, but, you know, over the course of 15 and a half years,  
23         many times.

24          Q. Many times.

25          It would be more than 20?

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1 A. Probably.

2 Q. More than 30?

3 A. Probably.

4 Q. And what percentage of those involved your taking  
5 of statements?

6 MS. JOHNSON: Objection.

7 THE COURT: Yeah, sustained.

8 MR. SCHECHTER: I'll except to that one,  
9 Judge.

10 THE COURT: Yes.

11 Q. Did you -- now, on the day in question you  
12 indicated, I believe, on direct examination you were working  
13 a 4:30 to 1 o'clock tour?

14 A. Yes, I did.

15 Q. Had you made an arrest prior to the end of your  
16 tour besides -- not including Mr. Gopaul?

17 A. I had not, no.

18 Q. So that your tour of duty was scheduled to expire  
19 at 1 a.m. in the morning, would that be correct?

20 A. Yes.

21 Q. And you were working what detail?

22 Was that anti-crime you were working that night?

23 A. On the night of Mr. Gopaul's case?

24 Q. Yes, yes.

25 A. No, I was assigned to the 105 Precinct detective

ws

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1 squad as an investigator.

2 Q. And, basically, you were there to pick up whatever  
3 came in, would that be fair to say?

4 A. I don't know that I would use those words.

5 Q. Now, you've indicated that your tour ended at  
6 1 o'clock, correct?

7 A. My scheduled tour would have been over at  
8 1 o'clock.

9 Q. Scheduled tour.

10 And there came a time when you were informed that  
11 Mr. Gopaul came into the precinct, is that correct, yes or  
12 no?

13 A. That's correct.

14 Q. And who informed you of that?

15 A. Sergeant O'Hagan, the 105 Precinct desk officer.

16 Q. Where is the desk officer in relation to the squad  
17 within the 105 Precinct?

18 A. They're on the first floor, I'm on the second  
19 floor.

20 Q. And were you present during Mr. Gopaul's arrest?

21 A. No.

22 Q. And do you know who was present during  
23 Mr. Gopaul's arrest?

24 A. I don't know, aside from Sergeant O'Hagan.

25 Q. Well, when you first met Mr. Gopaul where was he?

ws

1           A. He was in one of my interview rooms in the  
2 detective squad office.

3           Q. To your knowledge, had he been fingerprinted and  
4 had his mugshot taken?

5           A. No, he had not.

6           Q. Was he under arrest?

7           A. Yes, he was.

8           Q. What time did you first see Mr. Gopaul, if you can  
9 recall?

10          A. Right about 5:10 a.m. on the morning of the 24th  
11 of June.

12          Q. Officer, if your tour of duty ended at 1 o'clock,  
13 what were you doing between 1 a.m. and 5:10 a.m.?

14          A. I don't know what I was initially doing after  
15 1 o'clock in the morning, to my recollection, but at some  
16 point in time I had been notified by a detective at the  
17 detective bureau in Queens that there was an incident being  
18 investigated by patrol in the 105 Precinct and that  
19 Administration for Children's Services known as ACS --

20           MR. SCHECHTER: Objection, Judge, that's not  
21 responsive to my question.

22          Q. My question was, what were you doing between  
23 1 a.m., end of your tour of duty, and 5:10 a.m.?

24           What were you doing?

25           THE COURT: I think he was telling us.

1                           The objection is overruled.

2                           Go ahead.

3                           A. Okay, initially, I don't know what I was doing at  
4 exactly 1 o'clock, but at some point in time I was notified  
5 that an ACS worker was in the precinct interviewing a victim  
6 that was alleging some sort of sexual complaint involving  
7 her stepfather and that an investigator should assist in the  
8 investigation.

9                           Q. What time were you informed of that?

10                          THE WITNESS: I would have to refer to my  
11 report, your Honor.

12                          Q. Would you please look at your notes and I would  
13 like to see what it is you're looking at as well?

14                          A. Sure, absolutely. Okay, just referring to my  
15 complaint follow-up report labeled as follow-up Number 1 and  
16 I had noted the time at about 0230 in the morning that I was  
17 informed.

18                          Q. So at 2:30 a.m. you were first informed of ACS  
19 investigating suspected child abuse or something like that,  
20 would that be fair to say?

21                          A. A complaint involving a sexual complaint that  
22 involved ACS also.

23                          Q. Okay, so what were you doing from 1 a.m. to 2:30  
24 at the precinct?

25                          A. I don't recall specifically.

1           Q. When you put in for your overtime did you put in  
2 for your overtime from 1 a.m. or from 2:30 p.m.?

3           A. I would imagine it would have been from 1 a.m.

4           Q. So that you put in for overtime for what, from 1  
5 to 2:30 a.m.?

6           A. I don't recall specifically. I would have to  
7 check into it.

8           Q. Isn't it a fact that Harold Gopaul came into the  
9 precinct at 2:30 a.m.?

10           Isn't that a fact?

11           A. Not to my knowledge.

12           Q. Isn't it a fact that Sergeant O'Hagan, together  
13 with eight other officers, pummeled Mr. Gopaul in the  
14 precinct, spread-eagled him over a rail and beat him up?

15           Is that a fact?

16           A. Not to my knowledge and I would find it highly  
17 unlikely.

18           MR. SCHECHTER: May I have this marked,  
19 please, as Defendant's A?

20           (Defendant's Exhibit A marked for  
21 identification.)

22           MR. SCHECHTER: May I have that?

23           (Shown to counsel.)

24           Q. Now, officer, you keep a memo book as part of your  
25 required record keeping consistent with your duties as a

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1 police officer, correct?

2 A. At various points in my career, yes.

3 Q. Do you still keep a memo book?

4 A. Yes.

5 Q. You have it with you?

6 A. No.

7 Q. Were you told to bring it today?

8 A. Not specifically, no.

9 Q. Now, you've testified over 20 times in a court of  
10 law, have you not?

11 A. Yes.

12 Q. And during those times you testified in a court of  
13 law weren't you directed to bring your memo book with you by  
14 the District Attorney?

15 A. Not always.

16 Q. Let me show you what's being marked as Defendant's  
17 A for identification.

18 (Shown to witness.)

19 Q. Is this a copy of your memo entry?

20 A. No, it's not.

21 Q. It's not?

22 A. No.

23 Q. Did you provide this information to the District  
24 Attorney's Office?

25 A. No, I did not.

ws

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1 Q. Do you know who provided that to the District  
2 Attorney's Office?

3 A. I don't know specifically who provided it to the  
4 District Attorney's Office.

5 Q. Is that first page?

6 Is that your memo book?

7 A. This is not my memo book, no.

8 MR. SCHECHTER: May I show it to the District  
9 Attorney?

10 MS. JOHNSON: It's probably Officer Alfaro's,  
11 Judge.

12 MR. SCHECHTER: May I have it, please?

13 (Shown to counsel.)

14 Q. Did you keep a memo book in connection with this  
15 case?

16 A. I don't recall making any entries other than my  
17 tour of duty in regards to this case.

18 MR. SCHECHTER: I would like this to be  
19 marked, please, as Defendant's B for identification?

20 (Defendant's Exhibit B marked for  
21 identification.)

22 MR. SCHECHTER: May I have that also?

23 (Shown to counsel.)

24 Q. Do you recall preparing or having prepared at your  
25 direction a 105 Squad complaint follow-up index sheet?

1 A. Yes.

2 MR. SCHECHTER: May I approach the witness,  
3 your Honor?

4 THE COURT: Just give it to my officer.

5 MR. SCHECHTER: Officer, please show this to  
6 the witness.

7 (Shown to witness.)

8 Q. Is that a document you prepared as part of your  
9 duties as a detective at the 105 Precinct?

10 A. Yes.

11 Q. Now, you'll -- is that document kept in the  
12 ordinary course of business of the New York City Police  
13 Department?

14 A. On some occasions, yes.

15 Q. Is it the ordinary course of business of the  
16 Police Department to keep that document?

17 A. Again, on some occasions, yes.

18 Q. And were you under a duty to maintain that  
19 document?

20 A. Pardon me?

21 Q. Were you under a business duty to maintain that  
22 document on behalf of the Police Department?

23 A. I don't know if I was under a business duty, but I  
24 did prepare it.

25 Q. Is it -- as part of your duties?

1 A. As part of my documentation of my case, yes.

2 Q. And are the entries that are on that piece of  
3 paper, were they made basically at the same time as the  
4 incidents for which you made up those documents?

5 You made up that paper about the same time you  
6 rendered all the other paperwork in this case, did you not?

7 A. Probably not at the exact same time.

8 At some point in time I take my cumulative case  
9 and I organize it and I package it in a case folder and I  
10 document what I'm including in my case folder.

11 Q. This is within at least one or two days from the  
12 time that you did all your paperwork, would that be fair to  
13 say?

14 A. Probably.

15 Q. Okay.

16 MR. SCHECHTER: I offer this as -- in  
17 evidence, your Honor, as Defendant's B.

18 THE COURT: People?

19 (Shown to counsel.)

20 MS. JOHNSON: No objection.

21 THE COURT: Okay, so B will be received in  
22 evidence.

23 (Defendant's Exhibit B received in evidence.)

24 MR. SCHECHTER: Please show it to the  
25 witness.

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1 (Shown to witness.)

2 Q. I direct your attention to the entry marked M, as  
3 in Mary.

4 What does that say?

5 A. It says M and then it says Shulman's handwritten  
6 notes.

7 Q. I call for the production of your handwritten  
8 nets. Detective Shulman.

9 MS. JOHNSON: I have them, Judge.

Prior to Detective Shulman testifying I  
reviewed them with him. They're conversations he had  
with the complainant.

13                           In fact, Judge, there is one page in the  
14                           Rosario material that was relevant for the hearing that  
15                           counsel was provided that's indicated, Number 13,  
16                           Shulman's notes.

17 Does the Court wish to see the other notes?

18 THE COURT: Are you asking me to look at  
19 them, Mr. Schechter?

20 MR. SCHECHTER: I would like to see the note  
21 counsel is referring to at the very least anyway,  
22 Judge. I don't recall seeing any other handwritten  
23 entries. If she could show me what she says relates to  
24 this I would appreciate it.

25 MS. JOHNSON: It's itemized in the Rosario

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1 material turned over on October -- August -- excuse me,  
2 April 30th and it says Shulman's handwritten notes --  
3 Detective Shulman notes.

4 MR. SCHECHTER: If I might see this I might  
5 be able to obviate that. All of this could have been  
6 avoided if all the Rosario was turned over.

7 MS. JOHNSON: It looks like this -- like a  
8 memo book.

9 MR. SCHECHTER: I don't recall getting that  
10 document.

11 (Shown to Court.)

12 THE COURT: What are you handing me now,  
13 Shulman's entire notes?

14 MS. JOHNSON: Yes, including the  
15 conversations with the complainant, his handwritten  
16 notes with regards to that.

17 THE COURT: All right, have you shown  
18 Mr. Schechter the one -- the page that you did provide?

19 MS. JOHNSON: I'm looking for it in here,  
20 Judge.

21 Your Honor, it is a page that says contacted  
22 June 30th, 2008. It has Mr. Schechter's name on it.  
23 It's actually handwriting.

24 MR. SCHECHTER: I didn't know. It was just  
25 nondescript.

ws

1                   THE COURT: I'm sorry.

2                   MR. SCHECHTER: I did not know that that was  
3                   the officer's handwriting. There was nothing to  
4                   indicate where this came from.

5                   MS. JOHNSON: That's why there's a cover page  
6                   and it says Shulman's note.

7                   MR. SCHECHTER: Your Honor, I respectfully  
8                   call for the production of the officer's memo book in  
9                   this matter. I don't -- he says he didn't bring it, no  
10                  one told him to bring it.

11                  I think it strains credulity that an  
12                  experienced police officer doesn't know he needs his  
13                  memo book when he's testifying, however I will require  
14                  the memo book to continue my cross-examination after I  
15                  finish today with the officer.

16                  THE COURT: Well, is the -- is what you've  
17                  shown me, People, the copy of his memo book?

18                  MS. JOHNSON: That's what was taken out of  
19                  his file, Judge, but I believe he said that he doesn't  
20                  always keep a memo book for all cases so, I don't think  
21                  we've crossed the bridge whether or not he actually  
22                  made notations in a memo book on this case.

23                  THE WITNESS: There would have been no  
24                  notations in a memo book on the date in question  
25                  involving the case other than my possible work

1 schedule.

2 MR. SCHECHTER: See, your Honor, the memo  
3 book also has a chronology of what he did on his tour  
4 and I want to see that.

5 THE COURT: Well, why don't you ask him that.

6 MR. SCHECHTER: Because, your Honor, I don't  
7 have any means of impeaching him in the event he does  
8 not - with all due respect, officer - testify  
9 truthfully during the times everything happened in this  
10 case and I certainly would be entitled, before I ask  
11 him those questions, to have that material before me so  
12 I could use it for impeachment material.

13 I would ask him other questions, however I  
14 would still reserve my right to cross-examine him about  
15 his memo book and I request he be directed to bring it  
16 tomorrow.

17 THE COURT: What is it you expect to find it  
18 in the memo book?

19 He said there was no entries related to this  
20 investigation on that particular date.

21 Am I correct, detective?

22 THE WITNESS: Yes.

23 MR. SCHECHTER: With all due respect to the  
24 detective I am not constrained to accept anything he  
25 says with respect to what there is or there isn't.

1                   Under People v. Rosario I am entitled to have  
2                   that information. If that information is of no  
3                   moment --

4                   THE COURT: You want me to inspect his memo  
5                   book on that particular day to see whether or not his  
6                   entries that pertain to what he's testified to --

7                   MR. SCHECHTER: Even if the entries do not  
8                   pertain specifically to this case, the chronology based  
9                   upon his testimony here is important in this case and  
10                  I'm entitled to question him about the chronology of  
11                  events preceding this incident up to and including this  
12                  incident.

13                  THE COURT: Let me ask you this, detective.

14                  Did you have a memo book -- do you have --  
15                  did you have a memo book with you on that day -- on  
16                  this date, the 24th or the 23rd of June?

17                  THE WITNESS: Again, your Honor, the only  
18                  thing I would have put in, if I had filled it out that  
19                  day, would have been my tour of duty, present for duty  
20                  and end of tour.

21                  Everything else is documented on my  
22                  complaint follow-ups indicating times that I'm doing  
23                  different things.

24                  Unlike a patrol officer, I'm not required  
25                  every time I get a radio run to make a memo book entry.

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1                   THE COURT: I understand that.

2                   Now, do you still have that memo book  
3                   available?

4                   THE WITNESS: I would have to check to  
5                   determine.

6                   THE COURT: All right, I'm going to ask that  
7                   you bring it with you tomorrow.

8                   MR. SCHECHTER: Thank you, Judge.

9                   Q. Now, detective, at what time did you first begin  
10                  speaking to the complainant?

11                  MS. JOHNSON: Objection.

12                  THE COURT: Yeah, sustained.

13                  MR. SCHECHTER: Your Honor, may I have -- I'm  
14                  not asking what he asked her and what she asked him.

15                  I'm asking a chronology of time when he first  
16                  spoke to her.

17                  THE COURT: And what bearing would that have  
18                  on the issues that we have to address here?

19                  MR. SCHECHTER: If the Court wants me to have  
20                  an offer of proof I would be delighted to give it,  
21                  absent the officer being on the witness stand.

22                  THE COURT: All right, officer, you want to  
23                  step out -- detective, I should say?

24                  (Witness steps down.)

25                  MR. SCHECHTER: I have reason to believe that

ws

1           the events that the officer is testifying to occurred  
2           hours before he said they occurred.

3                         As such, the memo book entries are crucial,  
4           when he started speaking to the complainant is crucial,  
5           because my client, when he testifies, will interlock  
6           with that and I'm entitled to go into that simply -- I  
7           know what happened. She went to the precinct. She  
8           went to the precinct with two other people and she made  
9           a statement to him as did possibly the two other  
10          people.

11                       I am entitled to know, your Honor, and I  
12          apologize for pointing with a pen, I am entitled to  
13          know when that happened. I am entitled to develop a  
14          chronology of events and not be so restricted doing so,  
15          so I can find out exactly what the time picture is  
16          here. This is very important.

17                       THE COURT: And there's nothing in the  
18          Rosario material that reflects when he spoke to her?

19                       MR. SCHECHTER: That involves his talking to  
20          the complainant. They don't give me that stuff.

21                       MS. JOHNSON: Your Honor, what does his -- I  
22          still don't see what his offer of proof -- any  
23          conversations Detective Shulman had with the  
24          complainant prior to any contact with the defendant is  
25          irrelevant for purposes of Huntley or for purposes of

1 Mapp. It would be before any contact with the  
2 defendant.

3 MR. SCHECHTER: That is --

4 THE COURT: All right, let me ask you this,  
5 Mr. Schechter.

6 Other than the time when he initially spoke  
7 or met with the complainant, what other questions, just  
8 so we can anticipate this while he's outside, do you  
9 expect to ask him with regard to chronology?

10 MR. SCHECHTER: I'm going to ask him how many  
11 times he spoke to him.

12 THE COURT: Him?

13 MR. SCHECHTER: To her, thank you, and how  
14 many times he spoke to my client and thereafter spoke  
15 to the complaint and thereafter spoke to my client. I  
16 want to get this chronology, Judge.

17 THE COURT: All right, let's bring him back  
18 in. I'll allow you to ask those questions.

19 MR. SCHECHTER: Thank you.

20 (Witness resumes the stand.)

21 THE COURT: Okay.

22 Q. Officer, when for the first time did you speak to  
23 the complaining witness that evening?

24 A. I believe it's probably about 3:20 in the morning,  
25 to my recollection, on the morning of the 24th.

1 Q. And when you spoke to her who was present?

2 A. Just myself and the victim.

3 Q. And after speaking to her you took notes of what  
4 she was saying, yes or no?

5 A. Yes.

6 Q. And there came a time when you spoke to my client  
7 after you spoke to her, sometime thereafter, is that  
8 correct?

9 A. Yes.

10 Q. Do you recall when you first spoke to my client?

11 A. Again, I believe it was about 5:10 in the morning.

12 Q. So that would be about two hours after you spoke  
13 to the complaining witness?

14 A. Well, almost two hours from the time I initially  
15 started speaking to the complainant.

16 Q. How -- for what -- how long of a period of time  
17 were you speaking to her, that first time?

18 A. I spoke to her pretty substantially that first  
19 time before I interrupted to speak to your client.

20 Q. So it would be fair to say you spent two hours  
21 speaking to her the first time you spoke to her?

22 A. I may have taken a couple of little breaks in  
23 between, but a considerable amount of time during that wo  
24 hours, yes.

25 Q. After speaking to her -- withdrawn.

1                 After speaking to my client the first time did you  
2 go back and speak to her again?

3                 A. Yes, I spoke to her several times during the  
4 course of the day.

5                 Q. So it would be fair to say that you were speaking  
6 to the complainant from approximately 3:10 in the morning  
7 until about 8:30 in the morning?

8                 A. I don't understand your question.

9                 Q. Were you speaking to the complainant from 3:30 in  
10 the morning, off and on, until approximately 8:30 in the  
11 morning?

12                A. Over the course of the day I spoke to her several  
13 different times.

14                Q. When is the last time you spoke to her, if you can  
15 recall?

16                A. Again, I spoke to her on and off at various points  
17 during the -- all day, well into the evening.

18                Q. Are you saying we're in the evening?

19                          Are we not at --

20                 A. Into the next afternoon.

21                 Q. Was she always in the precinct when you spoke to  
22 her?

23                 A. When I spoke to her, but she had left the precinct  
24 at some point in time during the day.

25                 Q. And did she come back to the precinct to speak to

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1 you again?

2 A. Yes.

3 Q. Now, each time you spoke to Mr. Gopaul did you go  
4 back and speak to the complainant?

5 A. Not each time, no.

6 Q. There came a time when you first spoke to  
7 Mr. Gopaul, you said, at approximately 5:10, is that  
8 correct?

9 A. That's correct.

10 MR. SCHECHTER: Now, before we get to that, I  
11 would like these photographs marked Defendant's C, D, E  
12 and F, your Honor.

13 THE COURT: C,D,E and F.

14 (Defendant's Exhibits C,D,E and F marked for  
15 identification.)

16 Q. Now, officer, would you please look at Defendant's  
17 Exhibits C, D, E and F?

18 (Shown to witness.)

19 Q. Please keep them in the order.

20 A. Okay.

21 Q. Now, I direct your attention first to Exhibit C.  
22 Does that photograph fairly and accurately  
23 represent the outside of the 105 Precinct?

24 A. Part of it.

25 Q. Part of it, the front entrance, right?

ws

1 A. Yes.

2 MR. SCHECHTER: Okay, I ask that be marked in  
3 evidence as Defendant's C.

4 THE COURT: All right, to kind of move things  
5 along, I take it, Mr. Schechter, you're going to be  
6 moving all of these in.

7 MR. SCHECHTER: All of them, yes.

8 THE COURT: Are you going to have any  
9 objection to them, Ms. Johnson?

10 MS. JOHNSON: As long as they're fair and  
11 accurate as to how it looked on June 24th, 2008.

12 Let me see it again because this is the first  
13 time I'm seeing them. If that's the case, I have no  
14 objection for purposes of the hearing.

15 (Shown to counsel.)

16 THE COURT: And, detective, those  
17 photographs, whatever they depict there, fairly and  
18 accurately represent what those areas or places looked  
19 like on June 24th, 2008?

20 THE WITNESS: I would believe so.

21 I mean, the only thing is, E and F, you know,  
22 don't show the full capacity of the room, I mean, just  
23 because of the nature of the picture being taken from  
24 outside of the doorway.

25 MR. SCHECHTER: I'll get to that.

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1 THE COURT: Other than that- -

2 THE WITNESS: Yeah, other than that I would  
3 imagine it's fairly close.

4 THE COURT: You're offering them?

5 MR. SCHECHTER: Yes, Judge, I am.

6 THE COURT: Would you mark them, please?

7 (Defendant's Exhibits C,D,E and F received in  
8 evidence.)

9 MR. SCHECHTER: May I have them, please?

10 (Shown to counsel.)

11 Q. Officer, let me direct your attention to  
12 Defendant's Exhibit D in evidence.

13 (Shown to witness.)

14 Q. Is that the outside door to what is commonly  
15 called at the 105 Precinct the box?

16 A. Well, I mean it's a door to an interview room.

17 Q. Is it known in the 105 Precinct as the box?

18 A. Not this room per se. Interview rooms in general  
19 are referred to that.

20 Q. All interview rooms are known as the box?

21 A. To my knowledge.

22 Q. So -- now, looking at that picture could you  
23 please read what's on the door there?

24 A. 221 for the room number. There's a sticker that  
25 says proper tactics saves lives.

ws

1 Q. On the door?

2 A. That's on the door.

3 And at the time of this picture there's a sign  
4 that says interview room, complainants only.

5 Q. Was that sign on that room when you spoke to  
6 Mr. Gopaul in June?

7 A. I don't know. Could have been, I don't know.

8 Q. What is the purpose of having a room saying  
9 complainants only?

10 A. Don't know. I didn't put the sign up.

11 Q. But you brought Mr. Gopaul into that room, would  
12 that be fair to say?

13 A. No, I didn't.

14 Q. Who brought him up into that room?

15 A. One of the patrol officer officers.

16 Q. What's his name?

17 A. I don't know which officer brought him up.

18 Q. A uniform officer or a detective?

19 A. Would have been a uniform officer.

20 Q. And at whose direction would he have brought  
21 Mr. Gopaul up?

22 A. I had spoken to Sergeant O'Hagan and asked  
23 Mr. Gopaul be brought upstairs and whoever he directed to  
24 bring him upstairs would have brought him upstairs.

25 Q. So at the time Mr. Gopaul was placed in that room

1       you were not there, is that correct?

2           A.    No, I was in the other interview room with the  
3           victim.

4           Q.    That's correct.

5           So, for the purposes of the record, at the time  
6           that Mr. Gopaul was brought up to that room you were not in  
7           that room, is that correct?

8           A.    I think I just answered that.

9           Q.    No, you really didn't, officer.

10          The question is, at the time Mr. Gopaul was  
11          brought into that room were you in that room, yes or no?

12          A.    No.

13          Q.    Now, does Police Department procedure mandate that  
14          a prisoner who is left in a room be handcuffed to a rail or  
15          some fixed object?

16          A.    Depends on the circumstances.

17          Q.    Well, isn't that done so that the person who is in  
18          that room to be interrogated will not do harm either to  
19          himself or the interrogating officer?

20          A.    Pardon me?

21          Q.    Isn't that rule in effect so that the person being  
22          interrogated does not do physical harm either to himself or  
23          the officer who is interrogating him?

24          A.    That could be one interpretation of that rule,  
25          yes.

1 Q. Yet you said Mr. Gopaul was not handcuffed, is  
2 that correct?

3 A. Correct.

4 Q. Where were you sitting in relation to the back  
5 wall when you were interviewing Mr. Gopaul?

6 You may look at the picture, please, to aid you if  
7 you need it.

8 A. I have the picture with the closed door.

9 Q. Okay, I'm sorry, I'm wrong.

10 MR. SCHECHTER: Let me have this marked as  
11 Defendant's G.

12 THE COURT: It's already marked, in evidence.

13 MR. SCHECHTER: I'm sorry, Defendant's F.

14 I'm sorry, let me show the officer Defendant's F.

15 (Shown to witness.)

16 A. Okay, could you repeat your question, please?

17 Q. Yes.

18 My question is where were you sitting in relation  
19 to Mr. Gopaul?

20 Let me make it easier for you. Where were you  
21 sitting -- withdraw the question.

22 Where were you sitting and where was Mr. Gopaul  
23 sitting at the time you interviewed him?

24 A. I don't know if these are the exact chairs that  
25 were in the room on that day, but relative to this picture,

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1 the red and black chair would have been the position that  
2 Mr. Gopaul was seated in and then the black and gray chair  
3 on the opposite side of the table would have been where I  
4 was sitting.

5 Q. So that your back would be towards the door and  
6 Mr. Gopaul would be facing the door, would that be fair to  
7 say?

8 A. That would be accurate, yes.

9 || (Shown to Court.)

Q. Were you the only officer in the room?

11 A. Yes.

12 Q. Now, there is a window into that room, with a  
13 cover on the window, is that correct?

A. Sometimes it's covered, sometimes it's not.

15 Q. Well, was it covered at the time that you spoke to  
16 Mr. Gopaul?

17 A. I don't recall.

18 Q. And when you came in to see Mr. Gopaul you say you  
19 locked your weapon in your office?

20 A. Yes.

21 Q. Where is your office?

22 A. The area that my weapon is secured is out -- I  
23 can't really describe it from, I don't think, from this  
24 picture, but there's another doorway right here and then  
25 there's a half wall that comes all the way across separating

1       this whole section of the office from a whole another part  
2       of our office and on the opposite end of that larger office  
3       is where I have my desk.

4                 It's probably, you know, I don't want to swear to  
5       it, a measurement that I haven't measured, but probably a  
6       good 12, 15, feet outside of that door entranceway locked up  
7       in my desk.

8                 Q.      Did you place the weapon inside the holster inside  
9       your desk or was the weapon placed inside the desk and you  
10      still held the holster?

11               A.      I don't recall.

12                 I probably, just not to take my whole belt off,  
13       probably would have just taken the weapon out and put it in  
14       the desk.

15                 Q.      Now, when you first came into the room how was  
16       Mr. Gopaul dressed?

17               A.      He was wearing some sort of uniform. I believe it  
18       had a Ecolab patch on the arms.

19                 Q.      What color was the shirt?

20               A.      I don't recall specifically.

21                 Q.      And was there a tie with that shirt?

22               A.      I don't recall.

23                 Q.      And do you recall the color of his pants?

24               A.      I don't recall.

25                 Q.      Do you recall whether the shirt went into the

1       pants or not?

2           A.     Mr. Gopaul was seated, so I don't remember  
3       noticing if his shirt was tucked in or not.

4           Q.     When you saw Mr. Gopaul had you asked him whether  
5       he had eaten?

6           A.     I don't believe I had that conversation with him.

7           Q.     Did you ask him whether he had slept within the  
8       past 24 hours?

9           A.     I hadn't had that conversation with him.

10          Q.     As part of your training are you not told in the  
11       academy that the first thing you do when you're  
12       questioning a suspect is to get rough with him and then,  
13       after you're rough with him, try to make him your friend?

14           Is that part of your training at the Police  
15       Academy?

16           MS. JOHNSON: Objection.

17           THE COURT: I'll allow it.

18           You can answer.

19          A.     No, it's not.

20          Q.     The first time that you spoke to Mr. Gopaul  
21       Mr. Gopaul freely told you that he had this incident with  
22       his daughter at a park, I think you indicated, is that  
23       correct?

24          A.     Pardon me?

25          Q.     The first time you interviewed Mr. Gopaul he

1 explained to you that he had an incident involving his  
2 daughter Sana at an amusement park, would that be correct?

3 A. He indicates they had an argument and that he  
4 slapped her and then I believe in his written statement he  
5 spells out that it was revolving around an incident that had  
6 occurred at some sort of fair or festive park event.

7 Q. And he gave you that statement, is that correct,  
8 written?

9 A. Yes.

10 Q. And that statement is already in evidence. We've  
11 seen it introduced in evidence in this courtroom, correct?

12 A. Yes.

13 Q. Now, after you received that statement where did  
14 you go?

15 A. At Mr. Gopaul's request I took him to the restroom  
16 and allowed him to use the facilities. I then brought him  
17 back to the interview room and then he stayed in the  
18 interview room for a short while while I did other duties.

19 Q. When you took him to -- you personally took him to  
20 the restroom?

21 A. Yes.

22 Q. Where was the officer who brought him to the  
23 interview room?

24 A. I don't know.

25 Q. By Police Department regulation was he required to

1       be handcuffed when he went to the -- was brought to the  
2       interview room within the precinct?

3           A.    When he was brought to where?

4           Q.    When he was placed from -- withdrawn.

5           Where was Mr. Gopaul prior to being brought into  
6       the interview room?

7           A.    Somewhere downstairs.

8           Q.    Are there holding pens downstairs?

9           A.    There are.

10          Q.    Where are they located?

11          A.    Behind the desk.

12          Q.    Behind the sergeant's desk?

13          A.    Yes.

14          Q.    And were there any prisoners in there besides  
15       Mr. Gopaul?

16          A.    I don't know that Mr. Gopaul was in there or not  
17       prior to coming up to my office.

18          Q.    You don't know where he was, then, would that be  
19       fair to say?

20          A.    No.

21                   THE COURT: Is that no?

22                   THE WITNESS: No, once I was informed that he  
23       was in custody I directed that he be brought up to my  
24       office and within a short time thereafter he was  
25       brought up into my office.

1           Q.     When you made this direction was this by  
2 telephone?

3           A.     Yes.

4           Q.     And you were sitting by your desk?

5           A.     I was at one of the desks in my office.

6           Q.     And when Mr. Gopaul was brought up was he brought  
7 up in handcuffs or was he brought up without handcuffs?

8           A.     Again, I didn't see him brought up, but when I  
9 first saw him he was not handcuffed, but he was in a secure  
10 interview room.

11          Q.     Is there a key to that room?

12          A.     No.

13          Q.     So that room could be opened and closed freely, is  
14 that what you're saying?

15          A.     Well, no, if you're securing somebody in there, as  
16 you can see in the picture, there is a clasp on the door so  
17 you can secure the door.

18          Q.     From the outside?

19          A.     From the outside.

20          Q.     Did you have your handcuffs with you when you  
21 interviewed Mr. Gopaul?

22          A.     Yes.

23          Q.     Did you have to take the handcuffs off of  
24 Mr. Gopaul?

25          A.     No.

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1 Q. All right, so you order Mr. Gopaul to be brought  
2 up from downstairs.

3 How long after you made that telephone call was  
4 Mr. Gopaul brought to the room?

5 A. Not too long. I mean, I don't know exact time  
6 frame because I went back in to speak to the victim.

7 Q. Is it your testimony that after you asked  
8 Mr. Gopaul to be brought back to the room you went back to  
9 speak to the victim again?

10 A. Yes.

11 Q. What was your purpose in speaking to the victim  
12 again?

13 A. I was still speaking to the victim. I hadn't  
14 concluded speaking to the victim.

15 Q. Did the victim know Mr. Gopaul was in that room?

16 A. Not at that time, no.

17 MR. SCHECHTER: May I show the witness  
18 Exhibit E?

19 MS. JOHNSON: Can I see which one it is?

20 (Shown to counsel.)

21 (Shown to witness.)

22 Q. Now, officer, Exhibit E fairly represents the  
23 other part of the room that were not in the photographs, the  
24 other half of the room width-wise, would that be fair to  
25 say?

ws

1           A.     The back portion.

2                 The front corner is cut off, again, by the angle  
3     of the picture, but it shows the back right corner.

4           Q.     How tall are you, officer?

5           A.     About five ten.

6           Q.     How much do you weigh?

7           A.     250, 260.

8           Q.     Now, as a police officer you're trained to  
9     recognize the heights and weights of various witnesses or  
10   defendants, isn't that correct?

11          A.     Well, I don't know that you can train that.

12          Q.     Did you make a determination how tall and how much  
13   Mr. Gopaul weighs?

14                   MS. JOHNSON: Objection.

15                   THE COURT: Did he make a determination as to  
16   how much Mr. Gopaul weighed?

17                   Is that the question?

18                   MR. SCHECHTER: Yes.

19                   THE COURT: Did you make that determination?

20                   THE WITNESS: I don't think I had to think  
21   about that at the moment.

22          Q.     Would it be fair to say that you -- on June 8th  
23   you outweighed Mr. Gopaul by, easily, 70 pounds?

24          A.     On what date?

25          Q.     On June -- I'm sorry, on June 24th, 2008?

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1           A. I don't know how much I outweighed him by, but I  
2 would imagine I outweighed him.

3           Q. Isn't it a fact when you first got Mr. Gopaul in  
4 the room you grabbed him by his collar and threw him against  
5 the wall, holding on to the collar, and then grabbing,  
6 maintaining holding on to the collar, you dragged him back  
7 towards you?

8                   Isn't that a fact when you first saw him in the  
9 room --

10                  MS. JOHNSON: Objection.

11                  THE COURT: I'll allow it.

12                  A. Absolutely not.

13                  MR. SCHECHTER: Your Honor, can I please play  
14 the tape, first part of the tape, videotape, for the  
15 officer?

16                  THE COURT: You can play it tomorrow because  
17 we're going to break at this point.

18                  MR. SCHECHTER: Okay, I just wanted the  
19 officer to look at the tape.

20                  All right, we're breaking now?

21                  THE COURT: Because I have a prisoner I have  
22 to deal with, so I want to give my officers enough time  
23 to get her downstairs.

24                  MR. SCHECHTER: Would the Court kindly direct  
25 the officer not to discuss his testimony with

1                   Officer Alfaro?

2                   I did notice there was conversation, but I  
3                   don't know what it was about.

4                   THE COURT: Detective, you can speak to  
5                   Officer Alfaro, just not about your testimony.

6                   We'll see you back here tomorrow morning.

7                   MS. JOHNSON: At the Court's direction, I  
8                   sent subpoenas for Officer Alfaro and Detective Shulman  
9                   tomorrow.

10                  Officer Alfaro has already been subpoenaed  
11                  for two other matters, one being a Queens County  
12                  Criminal Court case and another being a traffic court  
13                  case.

14                  I advised her this is an ongoing hearing and  
15                  my position was that this matter took precedence.

16                  She indicated that traffic court is from 8:30  
17                  until 10 o'clock in the morning anyway, and I had  
18                  indicated to her that she would have to come here after  
19                  that, but I believe she has personal appointments  
20                  scheduled for tomorrow that she already did -- that she  
21                  had already had scheduled.

22                  THE COURT: All right, look it, she's under  
23                  subpoena. I expect her to be here.

24                  MS. JOHNSON: And I would inform the  
25                  precinct, as I did yesterday, this is an on going

1 hearing, this takes precedence to other matters and I  
2 thank the Court for the Court's phone call to assist  
3 with witnesses.

4 THE COURT: All right, thank you.

5 Detective, we'll see you tomorrow.

6 (Witness steps down.)

7 (Proceedings adjourned to Tuesday, May 5th,  
8 2009 at 9:30 a.m.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X  
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment  
5 : No. 2415N/08  
6 -against- :  
7 HAROLD GOPAUL, : Sex Abuse 1  
8 :  
9 Defendant. : Huntley/Mapp  
10 : Hearings-----X

11 May 5, 2009

12 9 252 Old Country Road  
13 Mineola, New York

14 B E F O R E:

15 HONORABLE JAMES P. McCORMACK,  
16 Acting Supreme Court Justice

17 A P P E A R A N C E S:

18 (As Previously Noted.)

19 \* \* \* \*

20 THE CLERK: This is a continued hearing of  
21 Harold Gopaul, Indictment 2415N of 2008.

22 Are the People ready?

23 MS. JOHNSON: Yes.

24 Can I place a couple of things on the record?

25 THE COURT: Yes.

26 MS. JOHNSON: I handed counsel a copy of

27 Detective Shulman's memo book from the date of

1                   incident. It's two pages. It's the cover page of his  
2                   actual book and the entries.

3                   I've also handed counsel a Xerox copy of  
4                   photographs as part of the People's continuing  
5                   discovery. I indicated to him that we were not even  
6                   sure if we were going to be using them on our direct  
7                   case.

8                   I've also handed a copy of a fax that I  
9                   received regarding the logbook from the command dated  
10                  Tuesday, June 24th, 2008. That's what was faxed over  
11                  to my office yesterday.

12                  I don't know if your Honor wants to deal with  
13                  the other issues now with the uniformed officer or just  
14                  get this going and we can do it after the detective is  
15                  done.

16                  THE COURT: Mr. Schechter, you received those  
17                  items, I take it?

18                  MR. SCHECHTER: Your Honor, I received what  
19                  appears to be the portion of Detective Shulman's memo  
20                  pad for June 24, 2008 and I received a portion of the  
21                  logbook for June 24th, 2008.

22                  Unfortunately, it's missing a very crucial  
23                  time period of midnight to 5:57 p.m. -- a.m. and  
24                  therefore it's incomplete.

25                  As I explained earlier, I requested the

1           entire logbook for June 24th, including the early  
2           morning hours, which is where all the activities we're  
3           dealing with here took place.

4           THE COURT: All right, People, I think that's  
5           a pretty fair assessment of the logbook. It does  
6           appear that there's a page that's missing. The page I  
7           have begins at 0558 hours, which is approximately  
8           6 a.m., and ends at 8:45, so --

9           MS. JOHNSON: Yes, Judge.

10          THE COURT: I'm going to ask you, at some  
11           point during the break, if you want to have  
12           Detective Schulman contact the 105 and fax that page to  
13           your office?

14          MS. JOHNSON: Absolutely, your Honor.

15          And yesterday when I had asked them to fax it  
16           over I asked for June 24th and this is what they sent,  
17           but I will absolutely ask to have that faxed over.

18          THE COURT: It seems at this point there is a  
19           great deal of miscommunication between your office,  
20           yourself, and the -- these officers in this case.

21          I've been sitting here since 9:30. Is --  
22           this detective doesn't understand that he's supposed to  
23           be here at 9:30 or is he being told to come at some  
24           other time?

25          MS. JOHNSON: Your Honor, the teletypes

1                   which, in fact, I provided a copy to the Court, are for  
2                   continuation for the hearings at 9:30.

3                   The detective, when he finished his tour last  
4                   night, responded back to the precinct to pick up his  
5                   case jacket. It's my understanding, I guess, that 9:30  
6                   was for him to be at the command for him to pick up his  
7                   case jacket and then to come to court.

8                   I did advise him that hearings begin as soon  
9                   as he gets here at 9:30. The Court is ready to proceed  
10                  at 9:30. I believe your Honor knows I was obviously  
11                  here at 9:30 -- in my office at 9:30.

12                  I am at the mercy of the Court to at least  
13                  have the Court advise --

14                  THE COURT: I plan to, but before I open my  
15                  mouth, if you will, I want to be sure he's not going to  
16                  tell me he's being told to come here at some other  
17                  time.

18                  MS. JOHNSON: Your Honor, he advised me that  
19                  he was going to get here as soon as he could. I told  
20                  him, "We continue as soon as you get here at 9:30. The  
21                  subpoena is for 9:30."

22                  He says he has to go from his home to Queens  
23                  to pick up the case jacket. I even called him on his  
24                  cell phone when he was running late.

25                  THE COURT: All right, I'll speak to him when

1           he comes in.

2           What's the issue with this other officer?

3           Are we going to have her today?

4           MS. JOHNSON: Your Honor, what the Court has  
5           before the Court is a copy of the teletype that was  
6           sent on May 1st for Officer Alfaro to appear here for  
7           continuation of hearing, today being May 5th.

8           I spoke to police liaison. They faxed me  
9           that information. A copy of the teletype that your  
10          Honor has confirms that the NYPD received  
11          communication.

12          However, as I indicated yesterday,  
13          Officer Alfaro had already been subpoenaed for traffic  
14          court and for another criminal case in Queens County.

15          I advised her that it was my belief that a  
16          pending hearing took precedence to both of those  
17          matters.

18          When I called the 105 Command they advised me  
19          that traffic court takes precedence to all other  
20          matters because if the officer does not show, the  
21          ticket --

22          THE COURT: What traffic court are we  
23          referring to?

24          I mean, not that I -- in my mind, I can't  
25          imagine traffic court taking any precedence over a

1 County Court matter.

2 MS. JOHNSON: I agree with your Honor and  
3 that was the PD's policy. They said traffic court  
4 takes precedence over other matters. I asked them if  
5 that was the policy. They said yes.

6 Either way, your Honor, the officer informed  
7 me that she was never notified by the command to appear  
8 here for today, despite that subpoena that clearly  
9 indicates that she was notified five days ago and that  
10 the command received the notification.

11 THE COURT: Is there somebody -- when you say  
12 command, are you talking about the 105th Precinct?

13 MS. JOHNSON: That is correct, Judge. Their  
14 actual notification goes through a records bureau and  
15 goes through another channel.

16 We were told that they need 24 hours notice.  
17 Here they've had four days notice that we were going to  
18 need her.

19 Even if she knew that we were going to need  
20 her for today, which I had advised her of, she is  
21 ordered to go to the traffic court and go to the other  
22 matters which she is officially notified through the  
23 official channels. So even though she knew about  
24 this --

25 THE COURT: Well, she was here yesterday.

1 MS. JOHNSON: Yes.

2 THE COURT: Obviously, she wouldn't have come  
3 here if she didn't have a subpoena to come here.

4 MS. JOHNSON: Absolutely. And the precinct's  
5 position and the PD's position is that she was already  
6 notified for traffic court and for Criminal Court and  
7 although we sent these, she was not officially notified  
8 to come today.

9 She was working last night. She was working  
10 at the precinct because she's a night officer and we  
11 complied with their 24-hour notification four days ago.

12 I don't know why their records bureau or  
13 whoever is in charge of it there never actually said to  
14 her, "Here is your subpoena from four days ago. You  
15 must come either after traffic court or after Criminal  
16 Court to Nassau County."

17 THE COURT: She's in traffic court where,  
18 Nassau County, Queens?

19 MS. JOHNSON: I believe it's the city, Judge.  
20 I don't know.

21 The other issue is that because she is a  
22 night officer and her official notification is for --  
23 that she was notified from the command for traffic  
24 court and Criminal Court, she is not permitted to come  
25 here without the official notification, even though she

1           actually knew about it, because the command didn't  
2           officially tell her she must appear in court.

3           MR. SCHECHTER: Judge, may I be heard?

4           THE COURT: Yeah.

5           MR. SCHECHTER: The system of traffic court  
6           in New York City is that the traffic court is separate  
7           from the Criminal Court unless they're dealing with  
8           matters involving driving with a suspended license or  
9           driving while intoxicated.

10           Any unclassified VTL misdemeanor is done in  
11           Criminal Court. All of the regular traffic  
12           infractions, speeding, going through a red light, that  
13           is done in traffic court which is completely the lowest  
14           end of the criminal spectrum.

15           Additionally, Criminal Court never takes  
16           precedence over County or Supreme Court, Judge.

17           I'm beginning to smell a rat here with the  
18           superstructure of the 105 Precinct. They only supplied  
19           part of the documentation that was supposed to be  
20           supplied to us, Judge, they've been stone walling us,  
21           there are inconsistencies that will manifest itself  
22           with respect to this officer's tours and I think  
23           there's something in the nature of, I don't want to say  
24           cover-up, but certainly I'm beginning to smell a rat  
25           with respect to the 105 Precinct. They are not

1                   cooperating with this Court and I don't understand why.

2                   Which is why normally I respectfully ask the  
3                   Courts to direct witnesses to be here the next day so  
4                   the witness has no squeaking room because if he  
5                   violates that it's a contempt of court.

6                   MS. JOHNSON: Your Honor, I even went so far  
7                   as we already sent a subpoena for Officer Alfaro for  
8                   tomorrow. I didn't know what the Court's or  
9                   Mr. Schechter's schedule was, but to avoid any problem,  
10                  that was done over an hour and a half ago to make  
11                  sure --

12                  THE COURT: All right, well, let me --

13                  MS. JOHNSON: While your Honor steps off the  
14                  bench can I have Detective Schulman call the precinct  
15                  to have that other page faxed?

16                  THE COURT: Yes.

17                  (Pause in the proceedings.)

18                  (The witness, Leonard Schulman, having  
19                  previously been sworn, resumed the witness stand.)

20                  THE COURT: Detective, I need you here at  
21                  9:30.

22                  I understand you work at nights?

23                  THE WITNESS: Yes, your Honor.

24                  THE COURT: All right, I can't lose an hour  
25                  and a half or an hour. Like I said to you a couple of

1 days ago, we're under a tight schedule and I need you  
2 here -- I don't know where your other officer is.

3 If there's an emergency, I understand. If  
4 something comes up, you have the DA's cell phone, call  
5 her. I'm sitting here for an hour and a half doing  
6 nothing.

7 THE WITNESS: I was here at 9:30 yesterday  
8 morning, your Honor, and this morning I believe I was  
9 able to park the car about 10:15. I apologize. I was  
10 a little bit late. There was a little bit of traffic  
11 with the rain and all.

12 THE COURT: Ms. Johnson, when was this  
13 subpoena for Officer Alfaro sent because my law  
14 secretary is being told --

15 MS. JOHNSON: This is the fax. This 9:12 --

16 LAW SECRETARY: Back to you?

17 MS. JOHNSON: Back to me from the liaison for  
18 the Court.

19 Right here, your Honor, it says May 1st, 2009  
20 up here. That top fax is them faxing it over to me  
21 this morning.

22 LAW SECRETARY: It's a subpoena or a  
23 teletype?

24 MS. JOHNSON: It's a teletype.

25 LAW SECRETARY: They're saying they don't

1 have a subpoena and no record of her needing to be here  
2 today.

3 MS. JOHNSON: That's the receipt of it on  
4 top.

5 THE COURT: Ask them what they need and we'll  
6 make sure they get it.

7 THE CLERK: Detective, you're reminded that  
8 you're still under oath.

9 THE WITNESS: Yes.

10 MR. SCHECHTER: Shall I proceed, your Honor?

11 THE COURT: Yes.

12 MR. SCHECHTER: If the Court pleases, I'm  
13 just trying to find my last question and answer.

14 CROSS-EXAMINATION CONT'D

15 BY MR. SCHECHTER:

16 Q. Now, Detective Schulman, you recall testifying  
17 yesterday that on June 24th you were working a 4:30-to-1  
18 tour?

19 Do you recall testifying to that?

20 A. From the night of the 23rd into the morning of the  
21 24th.

22 Q. Right, 23rd into 0100 a.m.

23 On the 24th you say you were working an 8 to 4:30  
24 tour?

25 A. Due to the fact that I was still working on the

1 Gopaul case and the Awan case at 8 o'clock in the morning, I  
2 went back on a day tour.

3 Q. Were you in court at 8 a.m. in the morning?

4 A. No.

5 Q. Where were you?

6 A. I was in my office.

7 Q. Was anybody with you?

8 A. Probably.

9 Q. Who was with you?

10 A. I don't know specifically who was working.

11 Q. Was it an officer or was it any of the witnesses?

12 A. Mr. Gopaul was in my office.

13 Q. At 8 a.m.?

14 A. Yes.

15 Q. And he was in your office or in the interrogation  
16 room?

17 A. He's in the interview room which is in my office.

18 Q. Oh, I see.

19 So it would be fair to say you worked straight  
20 through from 4:30 through 4:30 the next day?

21 A. I worked through the next afternoon into the  
22 evening. I would have to look at the memo book to see  
23 exactly what time I finished that day.

24 Q. Okay, please do.

25 A. I actually worked until 9:33 p.m. Tuesday evening

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1 and then I went back on duty again from 9:33 p.m. to 6:06  
2 the next morning.

3 Q. Is that all overtime?

4 A. No.

5 Q. What part was overtime, officer?

6 MS. JOHNSON: Objection.

7 THE COURT: Yeah, sustained.

8 MR. SCHECHTER: Now, I would like if the  
9 officer -- would I be able to ask the officer to sit in  
10 the jury box so that he could view the videotape,  
11 Judge?

12 THE COURT: Yes.

13 Detective, if you would just have a seat  
14 where you were yesterday for a moment?

15 (Witness steps down.)

16 MR. SCHECHTER: Now, your Honor, I  
17 respectfully ask counsel to turn the videotape on right  
18 now.

19 Now, could you freeze that, please?

20 Q. Now, officer, I draw your attention to  
21 Mr. Gopaul's image in that videotape.

22 Can you see him clearly?

23 A. Pretty much.

24 Q. Would you need to go closer?

25 A. No.

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1 Q. I direct your attention --

2 MR. SCHECHTER: I ask the Court to also,  
3 please.

4 Q. I direct your attention to the collar of his  
5 shirt.

6 Now, is the collar of his shirt closed or is it  
7 spaced widely?

8 A. It appears to be unbuttoned on the top.

9 Q. And would you say that the distance between the  
10 two sides of his shirt is not what normally that shirt would  
11 look like were it closed?

12 A. Again, it appears unbuttoned, so it doesn't look  
13 the same as it looks when it's buttoned.

14 Q. Was the shirt the same way when he came into the  
15 room with you -- withdrawn.

16 Was his shirt in that same condition when you  
17 first came into the room and observed him in that room?

18 A. I don't recall if his shirt was unbuttoned or not  
19 when I first came into the room.

20 Q. Well, there came a point of time when you were  
21 questioning him over a two or three-hour period, is that  
22 correct?

23 A. Yes.

24 Q. Did his shirt always appear like that during the  
25 two or three-hour period that you were questioning him?

ws

1           A. Again, I don't recall if his shirt was buttoned or  
2 unbuttoned.

3           Q. Now, you'll notice that the two lower parts of the  
4 shirt --

5           MR. SCHECHTER: I'm asking the Court to take  
6 judicial notice of this, and I'm referring to this area  
7 (indicating).

8           Q. And I'm referring to this area here and this area  
9 here is distorted downward.

10          Do you notice that?

11          THE COURT: Do you want to, just for the  
12 record, indicate what it is that you're point at?

13          MR. SCHECHTER: Yes, I'm pointing to the area  
14 on the videotape on a point on the lower right center  
15 part of the video which shows the bottom left portion  
16 of Mr. Gopaul's shirt and also the right lower portion.

17          All of this is basically in the center of the  
18 video showing that the shirt is depressed down on the  
19 left side and down on the right side.

20          Q. Now, was Mr. Gopaul's shirt in that condition when  
21 you first saw him?

22          A. Again, I don't know if his shirt was buttoned or  
23 unbuttoned when I first came in to speak to him.

24          Q. When you -- withdrawn.

25          Have you any physical contact with Mr. Gopaul

1       whatsoever?

2           A.    I might have shook his hand when I introduced  
3 myself, but other than that, no.

4           Q.    Isn't it a fact that you took your hand right by  
5 his collar, right where that distortion of his shirt is, you  
6 grabbed his shirt with your hand, indicating a hand with a  
7 palm down, grabbing his shirt, pulling him towards you, then  
8 pulling him away.

9           Isn't that what you did?

10          A.    Absolutely not.

11           MR. SCHECHTER: Your Honor, I have no more  
12 questions of the officer.

13           THE COURT: Okay, sure.

14           If you would, detective, just resume your  
15 seat back in the witness box?

16           (Witness resumes the stand.)

17          REDIRECT EXAMINATION

18          BY MS. JOHNSON:

19           Q.    Detective Schulman, during the time you were with  
20 the defendant on June 24th, 2008 did he ever complain of any  
21 injuries?

22          A.    No, he did not.

23          Q.    Did he ever ask for any medical attention?

24          A.    No, he did not.

25          Q.    Did you ever observe any injuries on him?

1 A. No, I did not.

2 MS. JOHNSON: Nothing further.

3 THE COURT: All right, detective, if I could  
4 just ask a couple of follow-up questions?

5 As I looked at the video of Mr. Gopaul seated  
6 in the interview room there during the videotape it  
7 appears as though -- was he wearing two shirts?

8 In other words, it looked to be a T-shirt or  
9 some underlying shirt and then a shirt over it, if you  
10 recall?

11 THE WITNESS: I don't know if he had an  
12 undershirt on or not, your Honor. I mean, I didn't  
13 have any contact with his clothing.

14 THE COURT: Any other questions,  
15 Mr. Schechter?

16 MR. SCHECHTER: I have no questions of the  
17 officer.

18 THE COURT: All right, detective, thank you  
19 very much, you're excused.

20 MR. SCHECHTER: Wait, yes, I do.

21 RECROSS-EXAMINATION

22 BY MR. SCHECHTER:

23 Q. Officer, did you have to do a physical inspection  
24 of Mr. Gopaul's arms and legs at any time?

25 A. Not that I recall specifically, no.

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1 Q. Or his abdomen?

2 A. No.

3 MR. SCHECHTER: Thank you. No more  
4 questions.

5 THE COURT: You're excused, detective, thank  
6 you.

7 Could I just see the both of you?

8 (Discussion held at the bench, off the  
9 record.)

10 (The luncheon recess was taken at this time.)

11 \* \* \* \*

12 A F T E R N O O N S E S S I O N

13 THE COURT: Mr. Schechter, I indicated  
14 earlier that this morning there was an individual who  
15 my law secretary dealt with. I don't know from what  
16 facility one of those two subpoenas were directed to.  
17 I think they were both two different facilities?

18 MR. SCHECHTER: My investigator was informed,  
19 your Honor, that they had to deliver everything through  
20 the Manhattan facility, which they did.

21 As your Honor could tell from my subpoena,  
22 there's one specific bit of information that I really  
23 require out of that -- those materials and it's that  
24 that I'm most interested in.

25 THE COURT: All right, there was -- what took

1 place this morning is that subpoena came from one of  
2 the facilities with printed out material that was from  
3 a computer that they accessed.

4 What we were told is that there's a box of  
5 materials that I believe comes from Manhattan that  
6 we've directed them to send FedEx.

7 I take it that you're not, at least at this  
8 point, expecting any witnesses to testify with regard  
9 to the documents.

10 MR. SCHECHTER: No.

11 THE COURT: So what I asked them to do is  
12 send those materials to chambers FedEx.

13 The materials that we did receive this  
14 morning, I don't know how many pages there were, my law  
15 secretary has gone over them.

16 In essence, there's really not any statements  
17 by or attributable to her or attributable to these  
18 incidents in terms of her talking about these  
19 allegations.

20 A lot of them has to deal with her placement,  
21 if you will.

22 MR. SCHECHTER: That's what I'm most  
23 interested --

24 THE COURT: And that would be relevant in  
25 what sense?

1                           MR. SCHECHTER: I wish not to, with all due  
2 respect, to disclose that information, your Honor,  
3 especially in the presence of the prosecutor since this  
4 is part of the theory of my case.

5                           THE COURT: Let me say this.

6                           It's my intention, depending on what material  
7 I find to be appropriate for disclosure, that it's  
8 going to be disclosed to both sides.

9                           MR. SCHECHTER: Your Honor, I, with all due  
10 respect, I do not understand how if I -- the whole  
11 purpose of a subpoena, as it is with the People's  
12 subpoena because they don't notify counsel when they  
13 subpoena something, and I don't get any --

14                          THE COURT: As a matter of practice, if the  
15 People were to subpoena things to my chambers and I  
16 release them I would release them to the defendant as  
17 well as the People.

18                          MR. SCHECHTER: They don't have to. They can  
19 routinely subpoena information and the Police  
20 Department routinely gives them the information they  
21 subpoena without us knowing a thing about it.

22                          There's a reason that I have those things  
23 subpoenaed and there's a reason why the subpoenas were  
24 done *ex parte*, your Honor.

25                          I do not want to, in any way, telegraph

1           counsel my intentions and the reasons for my doing  
2           anything here. I have my own theory of the case and it  
3           entails getting certain information. The specific  
4           information is outlined in the first request part of my  
5           subpoena.

6           THE COURT: Well, as I indicated, I haven't  
7           looked at the materials myself yet.

8           As I indicated to you, there may be some  
9           materials that -- although I should preface my comments  
10          by saying nobody from these facilities, as of yet, is  
11          claiming any type of confidentiality or privilege  
12          attached to these documents.

13          In thinking about it, if no one is going to  
14          raise that, then I may just release them, again, as I  
15          said, to both sides.

16          But, again, I haven't gone through them. My  
17          law secretary just handed me one document that does  
18          appear to talk about the incident itself, so what I've  
19          asked my law secretary to do is make copies of what we  
20          received today.

21          As I indicated, there's apparently other  
22          material we're expecting to get in the next -- I would  
23          hope by tomorrow.

24          MR. SCHECHTER: Okay, Judge, but, as I said,  
25          just without specifying what it is, that first one or

1                   two sentences of my subpoena pretty much outlines what  
2                   I really -- what I'm interested in, at least at this  
3                   juncture.

4                   THE COURT: All right. Well, I'm going to  
5                   obviously provide what I do receive, absent somebody  
6                   claiming some type of privilege or confidentiality to  
7                   it.

8                   I don't know whether it's going to be in  
9                   response to your subpoena. Only you could say that,  
10                  obviously.

11                  MR. SCHECHTER: Okay. All right --

12                  MS. JOHNSON: Your Honor, the logbook had not  
13                  yet been received by my office.

14                  When I spoke to Detective Schulman he  
15                  indicated to me that although his detective squad is  
16                  housed at the 105 Precinct, it is a patrol division  
17                  log. He has requested that the patrol supervisor, one  
18                  of the only people that can actually access the book,  
19                  immediately, upon getting it, fax it over to my office,  
20                  but I have not yet received that yet.

21                  I also indicated to counsel -- I mean,  
22                  obviously Officer Alfaro is outside, we can proceed  
23                  with the hearing, with her testimony, but I had asked  
24                  for the Court's indulgence with a day to begin the  
25                  trial at least a day from now, but I just want

1                   your Honor to know there is conflict and issues  
2                   concerning witness availability on Monday and Tuesday.

3                   My suggestion to your Honor, and, of course,  
4                   this is -- I'm at the whim of the Court, is if we can  
5                   do pretrial tomorrow and start picking on Monday and  
6                   the reason why I ask that is because I have confirmed  
7                   with the officer and I've confirmed with the detective  
8                   that they are not available for personal reasons on  
9                   Monday and Tuesday of next week.

10                  If we were to pick on Thursday and Friday I  
11                  would not have witnesses available for Monday and  
12                  Tuesday, that being May 12th -- May 11th and May 12th.

13                  I did confirm with them they are both  
14                  available on Wednesday, Thursday and Friday.

15                  THE COURT: And that leaves us with one week  
16                  left for -- assuming all goes well and you get your  
17                  case in from Wednesday to Friday next week, that leaves  
18                  us with the week of the 18th for the defendant's case  
19                  to go in, which it appears as though there is going to  
20                  be somewhat of a defense case, you know, jury charge,  
21                  deliberations, and I've got Mr. Schechter looking to  
22                  get on a plane on the 27th.

23                  MS. JOHNSON: And I understand that, Judge.  
24                  That's why I'm bringing it to the Court's attention,  
25                  that the detective and the police officer are not

1 available on Monday or Tuesday.

2 MR. SCHECHTER: The complainant is.

3 THE COURT: At this point I really loathe to  
4 entertain any applications from any of these officers  
5 regarding their availability. It seems as though  
6 they've had issues with regard to their availability  
7 since this case began.

8 You know, barring some type of medical  
9 emergency, as far as I'm concerned, depending on what  
10 we cover today, I would be inclined to order a panel  
11 for tomorrow afternoon and start picking tomorrow  
12 afternoon.

13 If that becomes not feasible, then we'll  
14 start on Thursday morning. I mean, obviously you'll  
15 have your complainant.

16 MS. JOHNSON: Yes, Judge.

17 THE COURT: She is available.

18 MS. JOHNSON: She is, your Honor.

19 THE COURT: So -- I can't at this point, with  
20 the history that's gone on so far -- and, believe me,  
21 nobody wants to accommodate an attorney more than  
22 myself, but at this point I can't run the risk of  
23 picking on Monday.

24 Quite frankly, although there's only ten  
25 peremptories for each side, I think given the nature of

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1           the case it's not going to be a jury selection that's  
2           not going to be necessarily that quick, particularly  
3           when jurors hear the nature of the allegations.

4           So I think the sooner we get this going the  
5           better off we're all going to be.

6           I just want to give this back to my law  
7           secretary so we could start making copies.

8           Do you want to call Ms. -- Officer Alfaro?

9           MS. JOHNSON: People call Police Officer  
10           Celica Alfaro.

11           C E L I C A   A L F A R O , a witness called on behalf of the  
12           People, having been first duly sworn by the clerk of  
13           the Court, was examined and testified under oath as  
14           follows:

15           COURT OFFICER: Take a seat.

16           For the record, state your name, spell your  
17           last name, shield number, rank and command?

18           THE WITNESS: Celica -- PO Celica Alfaro,  
19           A-l-f-a-r-o, shield number is 8865, from 105 Precinct,  
20           Queens South.

21           THE COURT: Okay, Ms. Johnson.

22           MS. JOHNSON: Thank you, your Honor.

23           DIRECT EXAMINATION

24           BY JOHNSON:

25           Q. Good afternoon, Officer Alfaro.

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1                   How long have you been employed by the New York  
2 City Police Department?

3                   A.     Approximately eight years.

4                   MR. SCHECHTER:   How many years?

5                   THE WITNESS:    Eight years.

6                   Q.     You may just want to push the microphone over.

7                   Have you been assigned to the 105 the entire time?

8                   A.     Yes.

9                   Q.     What are your general duties as an officer with  
10 the 105th Precinct?

11                  A.     Patrol.

12                  Q.     I'm going to direct your attention to June 24th,  
13 2008.

14                  Were you working that day?

15                  A.     Yes.

16                  Q.     Where were you working?

17                  A.     I don't recall. A sector.

18                  Q.     Were you assigned to the 105 Precinct?

19                  A.     Yes.

20                  Q.     What was your tour?

21                  A.     12 to 8.

22                  Q.     P.m. or a.m.?

23                  A.     2315 by 0750.

24                  Q.     That's 11:15 p.m. to 7:50 a.m.?

25                  A.     Yes.

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1 Q. Would that be the 23rd going into the 24th?

2 A. Yes.

3 Q. Did there come a time when a Detective Schulman  
4 asked you to assist in a case?

5 A. Yes.

6 Q. Can you tell us what happened?

7 What was it that Detective Schulman asked of you?

8 A. To process an arrest.

9 Q. What was the name of the suspect?

10 A. Mr. Gopaul.

11 Q. What --

12 A. Howard.

13 Q. What specifically was your job and your assignment  
14 with regard to the arrest?

15 A. Be an assigned officer and assist in processing  
16 the arrest.

17 Q. What did processing entail?

18 A. Doing the online and interviewing the complainant.

19 Q. When you say online, what does that mean?

20 A. The booking sheet.

21 Q. Would that be preparing the arrest paperwork?

22 A. Yes.

23 Q. Did you have any contact with the suspect,  
24 Harold Gopaul, on June 24th, 2008?

25 A. Yes.

ws

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1 Q. Do you see that individual in the courtroom today?

2 A. Yes.

3 Q. Can you point to that person and identify an item  
4 of clothing that that person is wearing?

5 A. He's wearing a gray suit.

6 Q. Can you point to the individual you're referring  
7 to?

8 A. Yes (indicating).

9 THE COURT: Indicating the defendant.

10 Q. Officer Alfaro, can you tell us what was your  
11 first contact with the defendant on June 24th, 2008?

12 A. When I was bringing him down to the first floor  
13 from the detective squad.

14 Q. What was the defendant doing in the detective  
15 squad when you first encountered him?

16 A. Sitting down.

17 Q. Where?

18 A. In the interview room.

19 Q. Was he handcuffed?

20 A. No.

21 Q. Was he with anybody?

22 A. No.

23 Q. What did you say to him when you first encountered  
24 the defendant in the interview room?

25 A. Saying that I was going to process his arrest and

ws

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1 I was going to take him downstairs.

2 Q. What was his response to you?

3 A. Okay.

4 Q. Was he cooperative?

5 A. Yes.

6 Q. What did you do to get him from the interview room  
7 to the processing?

8 A. I put the cuffs on him and took him downstairs and  
9 put him in a cell.

10 Q. Was there any conversation between you and the  
11 defendant on the way from the interview room to the cell?

12 A. Yes, I got his pedigree information in front of  
13 the desk.

14 Q. What type of pedigree information are you  
15 referring to?

16 A. His name, again, his address and his date of  
17 birth.

18 Q. Did the defendant provide that information to you?

19 A. Yes.

20 Q. What language was he speaking?

21 A. English.

22 Q. Were his answers responsive to your questions?

23 A. Yes.

24 Q. Was he cooperative?

25 A. Yes.

ws

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1 Q. Did he ask you any questions?

2 A. No.

3 Q. Other than pedigree information what was the  
4 extent of your conversation with the defendant at the desk?

5 A. That was it.

6 Q. Where did you go after that?

7 A. To the cell area.

8 Q. Where is that located compared to the desk?

9 MR. SCHECHTER: Which area was that?

10 MS. JOHNSON: The cell area.

11 Q. Is that what you said?

12 MR. SCHECHTER: Cell area.

13 A. Yeah, the cell area.

14 Q. Where is the cell area in relation to the desk?

15 A. Behind the desk.

16 Q. Did you personally bring the defendant to the cell  
17 area?

18 A. Yes.

19 Q. Who else was around?

20 A. I don't recall.

21 Q. Were there other officers around?

22 A. I don't recall.

23 Q. Did any other officers have any conversation with  
24 you or the defendant in route to the cell area?

25 A. I don't recall.

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1 Q. Did you observe any officers exert any physical  
2 force upon the defendant?

3 A. No.

4 Q. Did you observe any officers or hear any officers  
5 threaten the defendant?

6 A. No.

7 Q. Where was your weapon while transporting the  
8 defendant from the interview room down to the desk?

9 A. It was in a locked control -- a locked, I guess,  
10 locker.

11 Q. When did you put your weapon in the locker?

12 A. Prior to me taking him to the cell area.

13 Q. Was that Police Department procedure?

14 A. Yes.

15 Q. How did you get the defendant from the desk to the  
16 cell?

17 A. Walked him.

18 Q. Did he walk on his own?

19 A. No, I walked -- he walked in front of me and I  
20 walked behind him.

21 Q. Was he handcuffed?

22 A. Yes.

23 Q. Was he able to walk on his own?

24 A. Yes.

25 Q. Did he complain of any pain to you?

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1 A. No.

2 Q. Did he ask to receive any medical attention?

3 A. No.

4 Q. Did you observe any bruises on him?

5 A. No.

6 Q. Did you observe any scratches on him?

7 A. No.

8 Q. Did he ever ask to speak with an attorney?

9 A. No.

10 Q. Did he ever ask to make any phone calls?

11 A. No.

12 Q. Other than yourself, to your knowledge, as best as  
13 you remember, do you remember any other officers interacting  
14 with you and the defendant upon him entering the cell?

15 A. No.

16 Q. What did you say to defendant once he was brought  
17 into the cell?

18 A. That I was going to process the paperwork.

19 Q. Did you have any other conversation with him?

20 A. No.

21 Q. Was the defendant still handcuffed once he was  
22 placed into the cell?

23 A. No, I took the cuffs off.

24 Q. When was it that you took the cuffs off?

25 A. Once he was in the cell.

ws

Alfaro - People - direct

247

1 Q. After the door was closed?

2 A. Before the door was closed.

3 Q. Was your weapon still secured at that point?

4 A. Yes.

5 Q. Did you see any other members of law enforcement  
6 go into the cell once the defendant was in there?

7 A. No.

8 Q. Did you have any conversation after -- with the  
9 defendant after he was placed in the cell?

10 A. No.

11 Q. Did there come a time when Detective Schulman  
12 asked you to further assist with recovering property in this  
13 case?

14 A. Yes.

15 Q. What were you told to do?

16 A. To take the complainant down and to show me where  
17 the property was in the vehicle, where she pointed it out  
18 to.

19 Q. Where did you go with the complainant?

20 A. On the side of the precinct where the vehicle was.

21 Q. What type of vehicle was it?

22 A. An Ecolab truck, work vehicle.

23 Q. Do you recall what the defendant was wearing on  
24 June 24th, 2008?

25 A. Work uniform.

ws

Alfaro - People - direct

248

1 Q. How was it that you identified it as a work  
2 uniform?

3 A. Because it was all blue and it had, I believe, an  
4 Ecolab sign on the side.

5 Q. What happened when you went to the vehicle outside  
6 the 105th Precinct?

7 A. Excuse me?

8 Q. What did you do once you got to the vehicle that  
9 was parked outside the 105?

10 A. I took the complainant there. She showed me what  
11 was --

12 THE COURT: Let me just interrupt.

13 Did you take the complainant or the  
14 defendant?

15 THE WITNESS: The complainant.

16 THE COURT: Okay.

17 A. I took the complainant to the vehicle where she  
18 showed me where a mini meat clever was in a middle console.

19 Q. Did you recover that meat clever?

20 A. Yes.

21 Q. Where did you recover it from?

22 A. The vehicle.

23 Q. Where in the vehicle?

24 A. The middle console.

25 Q. What else did you recover from the vehicle?

ws

Alfaro - People - direct

249

1 A. A massager.

2 Q. What did the massager look like?

3 A. A cordless white massager.

4 Q. Where was that recovered from?

5 A. The vehicle.

6 Q. Where in the vehicle?

7 A. I don't recall.

8 Q. Inside or outside?

9 A. Inside.

10 Q. What did you do with the white massager and the  
11 meat clever after you recovered it?

12 A. I vouchered it.

13 Q. What does that mean?

14 A. I basically took it into police custody for arrest  
15 evidence.

16 Q. Was that brought to a property bureau?

17 A. It was placed in our property cell until the  
18 property clerk picks it up and takes it.

19 Q. Did you prepare vouchers --

20 A. Yes.

21 Q. -- with regard to the both of those items?

22 A. Yes.

23 Q. Was that the only evidence that you recovered in  
24 this case?

25 A. No.

ws

Alfaro - People - direct

250

1 Q. Where else did you go?

2 A. To the house.

3 Q. Whose house?

4 A. The defendant's house.

5 Q. Where was that located?

6 THE WITNESS: Can I refresh my memory?

7 I have to go back and look at the address.

8 THE COURT: All right, just indicate to us  
9 what it is that you're referring to. You can look at  
10 it, just tell us what it is that you're looking at.

11 THE WITNESS: Oh, okay.

12 I'm looking at the complaint report?

13 THE COURT: Okay.

14 A. I went to 242-10, 89 Avenue.

15 Q. In Queens?

16 A. In Queens.

17 Q. What did you do when you went to that location?

18 A. I was met by the mother of the complainant.

19 Q. Did she identify herself to you?

20 A. Yes.

21 Q. Who did you go with?

22 A. I went with two other officers.

23 Q. Do you recall what day it was that you went?

24 A. Same day as the 24th.

25 Q. What did you say to the victim's mother?

ws

1 A. If it's possible, I can come inside.

2 She let me in.

3 Q. Was she cooperative?

4 A. Yes.

5 Q. What did you do once inside the home?

6 A. I asked if I can go upstairs to retrieve a  
7 massager and she said yes.

8 Q. Where did you go?

9 A. To the bedroom.

10 Q. Whose bedroom?

11 A. The defendant's bedroom.

12 Q. Did it appear to you to be a master bedroom?

13 A. Yes.

14 Q. What did you recover from the bedroom?

15 A. A massager.

16 Q. Where did you recover it from?

17 A. Under the bed.

18 Q. Under the bed of the defendant's bedroom?

19 A. Yes.

20 Q. What color was it?

21 THE WITNESS: I would have to refresh my  
22 memory again, your Honor.

23 THE COURT: Yes.

24 A. I'm looking at Voucher P240076 and it's a -- was a  
25 two-speed massager, white and gray.

1 Q. Is that the one you're referring to that you  
2 recovered from the defendant's bedroom?

3 A. Yes.

4 Q. What did you do with that massager upon recovering  
5 it?

6 A. I took it back to the station house and vouchered  
7 it.

8 Q. Similar to your vouchering of the other property?

9 A. Yes.

10 Q. Did you prepare a property receipt with regards to  
11 that massager?

12 A. Yes.

13 Q. Once the defendant was placed into the cell behind  
14 the desk was that your last contact with him?

15 A. Yes.

16 MS. JOHNSON: I have no other questions for  
17 Officer Alfaro.

18 THE COURT: Okay, Mr. Schechter?

19 CROSS-EXAMINATION

20 BY MR. SCHECHTER:

21 Q. Officer Alfaro, prior to going to the defendant's  
22 work vehicle did you have any conversation with  
23 Detective Schulman?

24 A. Yes.

25 Q. And were you given anything by Detective Schulman?

1 A. A consent form.

2 Q. And with that consent form, what did you do with  
3 it?

4 A. I read it.

5 Q. And what did you do with it after you read it?

6 A. I went with the complainant down to the vehicle.

7 Q. And you already had the keys with you?

8 A. I don't recall.

9 Q. Where did you get the keys from?

10 A. I don't recall.

11 Q. Were you present in the courtroom yesterday with  
12 Detective Schulman?

13 A. Was I present in the courtroom?

14 Q. No, on the outside of the courtroom?

15 A. Yes.

16 Q. And did Detective Schulman take you to the window  
17 of this door behind me to the courtroom while the courtroom  
18 was either in session or my client, Mr. Gopaul, was sitting  
19 at the counsel table?

20 A. Not that I recall.

21 Q. Is it your testimony that he did not take you to  
22 the window to view my client, Mr. Gopaul, and point him out  
23 to you?

24 Is that your testimony?

25 A. No.

Alfaro - People - cross

254

1 Q. Did he do that?

2 A. No.

3 Q. Now, you indicated that you were doing a 11:15 to  
4 7:50 tour on Tuesday, June 24th, is that correct?

5 A. Yes.

6 Q. And part of your tour you were on radio motor  
7 patrol?

8 A. Yes.

9 Q. Were you the operator or the recorder?

10 A. I have to refresh my memory.

11 THE WITNESS: Can I get my memo book?

12 THE COURT: Yes, just tell us -- you're  
13 looking at a memo book?

14 THE WITNESS: Yes.

15 A. I don't have it written down.

16 Q. Do you recall if you were the operator or the  
17 recorder?

18 A. I don't recall.

19 Q. Who was your partner?

20 A. Officer Magor (ph).

21 Q. And was he one of the individuals you went to the  
22 house to search with?

23 A. No.

24 Q. What are the other names of the other police  
25 officers who accompanied you to the house to search?

1 A. Officer Morris and Officer Ingracia (ph).

2 Q. And when were you given this -- withdrawn.

3 When did you return to the station house after  
4 your initial patrol, do you recall?

5 A. Referring back to my memo book, approximately  
6 0440 hours.

7 Q. That would be would be -- 440 hours would be in  
8 the morning, 4:40 a.m., correct?

9 A. Yes.

10 Q. And approximately what time did the sergeant  
11 supervising your patrol sign your memo book?

12 A. Prior to that at 0412 hours.

13 Q. And where did that take place?

14 A. Out on patrol.

15 Q. Do you recall where when you were on patrol?

16 A. No.

17 Q. Now, you had -- when you were on patrol did you  
18 make an arrest?

19 A. I was asked if I wanted an arrest. I said yes.

20 Q. I'm sorry?

21 A. I was asked if I wanted an arrest. I said yes.

22 Q. Who asked you that?

23 A. The sergeant.

24 Q. Approximately what time did he ask you that?

25 A. Don't recall.

1           Q. And did you go to the property clerk with some  
2 property during your patrol?

3           A. No.

4           Q. I direct your attention to your memo book,  
5 officer. Your notation for 2337. You notice where it says  
6 borrow with property?

7                         What does that mean?

8           A. That's taking property from the day before. I  
9 took property down from the day before of everything that  
10 was vouchered as to -- that had to go to the lab.

11          Q. You made a narcotics arrest?

12          A. No, I was just assigned to go there. It was a  
13 station house assignment.

14          Q. And the property that you took to the -- is that  
15 to the property clerk?

16          A. No, to the 107 Precinct.

17          Q. Oh, you took property from the 105 to the 107?

18          A. Yes.

19          Q. Do you recall what property that was?

20                         MS. JOHNSON: Objection.

21                         THE COURT: I'll allow it.

22                         If you remember.

23          A. No.

24          Q. Now, this communication with respect to whether  
25 you want an arrest, was that from Sergeant O'Hagan?

1 A. No.

2 Q. Who was that from?

3 A. I believe it was Goodman.

4 Q. Who?

5 A. Sergeant Goodman.

6 Q. Spell that name, please?

7 A. G-o-o-d-m-a-n.

8 Q. And Sergeant Goodman was working the desk that  
9 night?

10 A. No.

11 Q. Who was working the desk, if you can recall?

12 A. I don't recall.

13 Q. Was it Sergeant O'Hagan?

14 A. I don't recall.

15 Q. Now, there came a point where you returned to the  
16 precinct.

17 Do you remember when you returned to the precinct  
18 after your initial motor patrol?

19 A. Yeah.

20 Q. What time?

21 A. Approximately 0440.

22 Q. Now, there's a notation in your memo book 10.2.

23 What does that mean?

24 A. That means return to station house.

25 Q. Now, I direct your attention to the third line

Alfaro - People - cross

258

1 down from the top. It says one yellow, 8.20.08.

2 What does that mean?

3 A. That is the color of the day and the return date.

4 Q. That is the color of what?

5 A. The color of the day and the return date.

6 Q. What does that mean?

7 A. That means for the officers to know if there's  
8 plainclothes that there's a color that we don't mistake with  
9 somebody else and if you're doing a Criminal Court summons  
10 that's the date that they're supposed to put down on the  
11 summons to return to court for the defendants.

12 Q. Got it.

13 Now, would it be fair to say that you received a  
14 communication from Sergeant Goodman between -- withdrawn.

15 Sergeant Goodman signed your memo book on 0412,  
16 didn't he?

17 A. Yes.

18 Q. And that was in the field, was it not?

19 A. Yes.

20 Q. Do you recall where you were when he signed your  
21 memo book?

22 A. No.

23 Q. Now, did you know where Detective Schulman was at  
24 that time?

25 A. No.

Alfaro - People - cross

259

1 Q. Did you have any communication with Detective  
2 Schulman?

3 A. Yes.

4 Q. And did that communication take place between 4:12  
5 in the morning and 4:40 in the morning?

6 A. No.

7 Q. When did that communication take place?

8 A. After 0445 hours.

9 Q. And when you returned to the station house do you  
10 recall who you saw behind the desk?

11 A. No.

12 Q. Did you observe Mr. Gopaul?

13 A. No.

14 Q. Had you been informed by the sergeant that there  
15 was someone under arrest?

16 A. Yes.

17 Q. And that was Sergeant O'Hagan?

18 A. I don't recall.

19 Q. Now, did you take the -- you said you processed  
20 Mr. Gopaul's arrest, is that correct?

21 A. Yes.

22 Q. Did you take the mugshot?

23 A. Yes.

24 Q. And where did you take that?

25 A. In the cell area.

ws

Alfaro - People - cross

260

1 Q. In point of fact, Mr. Gopaul was already under  
2 arrest, was he not, Officer Alfaro?

3 A. From my understanding, yes.

4 Q. And he had been under arrest for a considerable  
5 period of time, isn't that true?

6 A. Can you rephrase the question?

7 Q. Yes. Mr. Gopaul, prior to your coming back to the  
8 station house, had already been placed under arrest, isn't  
9 that a fact?

10 A. I don't know. I was out in the field. I  
11 didn't --

12 Q. Well, weren't you told to come back to the station  
13 house to take an arrest?

14 A. Yes.

15 Q. Well, had you been informed when you got back to  
16 the station house that Mr. Gopaul had already been placed  
17 under arrest?

18 A. Yes.

19 Q. And who placed him under arrest?

20 A. I wasn't there.

21 Q. Who was the actual arresting officer of  
22 Mr. Gopaul, Officer Alfaro?

23 A. I am.

24 Q. Well, I'm not talking about the processing  
25 officer, Officer Alfaro, I'm talking about the arresting

Alfaro - People - cross

261

1           officer.

2           Who first placed Mr. Gopaul under arrest?

3           MS. JOHNSON: Objection, asked and answered  
4           already. She doesn't know.

5           MR. SCHECHTER: Oh, no, no, no, no.

6           THE COURT: I'll allow it.

7           Can you answer that, officer?

8           THE WITNESS: I was out in the field. I  
9           can't answer that question.

10          Q. Well, when you got back to the station house, were  
11         you told who took credit for the collar?

12          A. I took credit for the collar.

13          Q. You took credit for the collar even though you had  
14         nothing whatsoever to do with the arrest, is that what  
15         you're saying?

16          A. I placed -- I processed his arrest. I'm the  
17         arresting officer.

18          Q. Well, obviously he was already under arrest when  
19         you got back to the station house, that's what you just told  
20         us a minute ago.

21           My question is, who placed him under arrest?

22          A. I don't recall.

23          Q. Did Sergeant O'Hagan tell you that he and other  
24         officers placed him under arrest?

25          A. I don't recall.

ws

1           Q.    Were you told that Mr. Gopaul resisted arrest in  
2 any way?

3           A.    I don't recall.

4           Q.    Officer, wouldn't you recall if an officer told  
5 you that Mr. Gopaul was violent because he resisted arrest?

6           Wouldn't you recall that?

7           A.    I would have to look at my paperwork to see the  
8 charges.

9           Q.    Do you have anything on you which would indicate  
10 whether or not Mr. Gopaul had been violent at the time he  
11 was placed under arrest?

12          A.    No.

13          Q.    Did you know whether Sergeant O'Hagan placed  
14 Mr. Gopaul under arrest together with other officers?

15          A.    I don't recall.

16          Q.    Do you know how many officers placed  
17 him under arrest?

18          A.    Don't recall.

19          Q.    When you came back to the station house where was  
20 Detective Schulman, if you know?

21          A.    When I returned?

22          Q.    Yes.

23          A.    Up in the squad.

24          Q.    Well, the squad is on the second floor of the  
25 station house, correct?

1 A. Yes.

2 Q. And was he with anyone or was he alone?

3 A. I don't recall.

4 Q. Well, did he have any conversation with you when  
5 you returned to the station house?

6 A. Yes, I went upstairs to the squad.

7 Q. And what did he tell you?

8 A. He told me the basics of the complaint report, of  
9 an open 61.

10 Q. Did you do a 61 in this?

11 A. No.

12 Q. Did you fill out any other police work, police  
13 paperwork?

14 A. Yes, the online.

15 Q. The online booking sheet?

16 A. Yes.

17 Q. Do you have a copy of that with you?

18 A. Yes.

19 Q. Can I see it, please?

20 (Shown to counsel.)

21 THE COURT: Just off the record one minute.

22 (Discussion held off the record.)

23 Q. May I have the document, please?

24 MS. JOHNSON: Judge, I just want to make sure  
25 there's nothing in it that he's not entitled to.

Alfaro - People - cross

264

1 (Shown to counsel.)

2 MS. JOHNSON: I think he has this already.

3 (Shown to counsel.)

4 Q. Now, officer, was Sergeant Manolingus (ph) on duty  
5 at that time as well?

6 Sergeant Manolingus?

7 A. I don't recall.

8 Q. Do you know who that is?

9 A. Sergeant Manolingus?

10 Q. Yes.

11 A. Yeah, supervisor.

12 Q. And how many sergeants were on duty when you got  
13 to the precinct?

14 A. I don't recall.

15 Q. Now, when you filled out the details of the  
16 arrest, this wasn't as a result of your conversations with  
17 the complainant, was it?

18 A. Yes, I interviewed her first.

19 Q. Oh, you interviewed her as well -- you interviewed  
20 her before Detective Schulman did?

21 MS. JOHNSON: Objection to this line of  
22 questioning, your Honor.

23 THE COURT: No, I'll allow it.

24 A. I interviewed her after I made the arrest.

25 Q. You interviewed her after you made the arrest?

ws

Alfaro - People - cross

265

1 A. I interviewed -- because it was an open 61.

2 Q. Do you know whether Detective Schulman had  
3 interviewed her?

4 A. I don't recall.

5 Q. Isn't it a fact, Officer Alfaro, that Detective  
6 Schulman interviewed the complainant and you, in order to  
7 get credit for the arrest, basically filled out this online  
8 booking sheet to recite what Schulman told you?

9 A. Can you rephrase the question?

10 Q. Isn't it a fact that it was Schulman who  
11 interviewed the complainant and that the information on this  
12 online booking sheet was not your -- the product of your  
13 interviewing the complainant, but what Schulman told you?

14 A. No.

15 MS. JOHNSON: Your Honor, counsel was  
16 provided copies.

17 Can we give that back to the officer?

18 MR. SCHECHTER: Yes, when I'm finished with  
19 it.

20 Q. Now, she told you that Mr. Gopaul punched her in  
21 the face?

22 MS. JOHNSON: Objection. Your Honor, this is  
23 totally outside the scope of the hearing, any  
24 conversations with the complainant.

25 MR. SCHECHTER: Withdraw the question, Judge.

Alfaro - People - cross

266

1 I would like to return this to the o officer.

2 (Shown to witness.)

3 Q. Now, officer, how long did it take you to process  
4 Mr. Gopaul's arrest?

5 A. I don't recall.

6 Q. Was it one hour, two hours, three hours?

7 How long was it?

8 A. I don't recall.

9 Q. Well, what did you do when you processed  
10 Mr. Gopaul's arrest?

11 Tell the Court what you did.

12 A. When I processed it?

13 Q. Yeah, what did you do?

14 A. I processed him, fingerprinted, took his picture.

15 Q. You fingerprinted him and you took his picture.

16 You took the picture or did a separate officer  
17 take the picture?

18 A. I took the picture.

19 Q. And after you took the picture, that's just a  
20 regular mugshot, it's like a Polaroid, right?

21 A. It's a -- like a sheet that gets printed out  
22 through a printer?

23 Q. Well, how do you take the picture, with a camera  
24 or through a computer?

25 A. Through a camera.

Alfaro - People - cross

267

1 Q. And what kind of camera was it you took the  
2 picture with?

3 A. Digital.

4 Q. And that comes through the computer, then?

5 A. Yes.

6 Q. And you put some information together with the  
7 photograph, is that correct?

8 A. Yes.

9 Q. And you took his fingerprints?

10 A. Yes.

11 Q. And you filled out some paperwork?

12 A. Yes.

13 Q. How many papers did you do, if you can recall?  
14 The normal processing?

15 A. I would have to look at my paperwork.

16 Q. Well, let's see.

17 You got the online booking sheet?

18 A. Um-hum.

19 Q. You don't do 61s?

20 A. I didn't do the 61.

21 Q. And you're not a detective so you don't do the  
22 DD5?

23 A. I didn't do the DD5.

24 Q. You did the vouchers, but that's later, after you  
25 recover the material?

ws

1 A. Yes.

2 Q. Prior to the search, how long were you at the  
3 precinct?

4 A. Don't recall.

5 Q. When did you do the search, do you recall that?

6 A. For the vehicle, it was still daylight.

7 Q. And when you -- did you take the vehicle into your  
8 custody or did you leave it where it was?

9 A. I left it where it was.

10 Q. And that was at the precinct, correct?

11 A. Yes.

12 Q. Okay. And how long did it take -- how far is  
13 Mr. Gopaul's home from the precinct, if you can recall?

14 A. About two minutes.

15 Q. Okay. Now, you say you arrested Mr. Gopaul at  
16 4:45 a.m., is that correct?

17 A. Yes.

18 Q. Then the next log entry you have is 2124,  
19 returning the Ecolab to a representative, I suppose, of  
20 Ecolab company, would that be correct?

21 A. Yes.

22 Q. Please tell the Court what you did for  
23 approximately 12 hours, or more?

24 A. Waited for the Ecolab guys to come, waited for the  
25 riding ADAs to come down to the precinct.

1 Q. Now, hold on.

2 Who was -- is that for a statement to be taken of  
3 Mr. Gopaul?

4 A. I don't recall.

5 Q. Well, what was the purpose of waiting for the DAs  
6 to come to the precinct?

7 A. Because it was a sensitive case.

8 Q. Detective Schulman was there with Mr. Gopaul at  
9 that point, was he not?

10 A. Yes.

11 Q. Well, what was the need for you to be there  
12 waiting for the DAs if Detective Schulman was there?

13 A. Because I was still the arresting officer.

14 Q. Detective Schulman had Mr. Gopaul in his custody,  
15 did he not?

16 A. Yes, but he's still my prisoner.

17 Q. Oh, so he's your prisoner.

18 So, in other words, what you're saying --

19 A. I'm still responsible.

20 Q. So from 4:45 a.m. until 9 o'clock at night the  
21 following night, the 25th, that would be, let's see, that's  
22 19 hours.

23 So what you're saying is you were with Mr. Gopaul  
24 for 19 hours, is that correct?

25 A. Just outside the interview room in the detective

1 squad.

2 Q. So you were sitting there for three tours, over  
3 two tours?

4 A. Yes.

5 Q. And you received overtime for two tours, is that  
6 correct?

7 A. Yes.

8 MS. JOHNSON: Objection.

9 THE COURT: All right, overruled.

10 A. Yes.

11 Q. Now, what if I told you that the statements  
12 obtained from Mr. Gopaul finished about a quarter to 9.

13 What were you doing from a quarter to 9 to 2124?

14 MS. JOHNSON: Objection.

15 THE COURT: Yeah, I'm just -- I'm going to  
16 sustain it as to form.

17 Could you just be a little bit clearer?

18 MR. SCHECHTER: Withdrawn.

19 Q. Is it your obligation to stay with the prisoner  
20 all the time until he is lodged?

21 A. Yes.

22 Q. Were you in the room at the time of the  
23 interrogation?

24 A. No.

25 Q. Why?

1 A. Because I was asked to step outside.

2 Q. Why, it was your prisoner?

3 A. Because --

4 MS. JOHNSON: Objection.

5 Which interrogation are we talking about.

6 THE COURT: Well --

7 Q. The video statement?

8 A. The ADAs asked me to stay outside while they did  
9 the videotaping.

10 Q. Did you transfer custody back to  
11 Detective Schulman?

12 A. Yes. But I was still in the squad at the time.

13 Q. What time, can you recall, did you receive the  
14 call from the sergeant telling you that he wanted you to  
15 take an arrest?

16 A. I don't recall.

17 Q. Was it during your radio motor patrol?

18 A. Yes.

19 Q. At any time were you present during any  
20 interrogation of Mr. Gopaul?

21 A. No.

22 MR. SCHECHTER: No more questions of the  
23 witness, Judge.

24 THE COURT: Anything, Ms. Johnson?

25 MS. JOHNSON: Just quickly.

Alfaro - People - redirect/recross

272

1           REDIRECT EXAMINATION

2           BY MS. JOHNSON:

3           Q.     Officer Alfaro, did you have opportunity to  
4       observe the defendant after he was interviewed by  
5       Detective Schulman?

6           A.     Yes.

7           Q.     Did you observe any injuries on his body?

8           A.     No.

9           Q.     Did he complain of any injuries?

10          A.     No.

11          Q.     Did he ask for -- to receive any medical  
12       attention?

13          A.     No.

14                   MS. JOHNSON: Nothing else, Judge.

15           RECROSS-EXAMINATION

16          BY MR. SCHECHTER:

17          Q.     Did you examine the defendant's arms and legs?

18          A.     No.

19          Q.     Did you examine his abdomen?

20          A.     No.

21                   MR. SCHECHTER: Thank you.

22                   THE COURT: Okay, thank you very much.

23                   Step down.

24                   (Witness excused.)

25                   THE COURT: People, you rest?

ws

1 MS. JOHNSON: I rest.

2 Can I just officially excuse her?

3 THE COURT: Yes.

4 While you're doing that --

5 MS. JOHNSON: Make a call?

6 THE COURT: Yeah, make a call and tell her to  
7 expect to see her next week early.

8 MR. SCHECHTER: Your Honor, I'm respectfully  
9 asking the Court to direct the witness to be available  
10 for trial so that we don't have a repeat of today where  
11 she ignored this Court's -- the DA's subpoena.

12 MS. JOHNSON: Your Honor, I had a  
13 conversation with Officer Alfaro about what occurred  
14 today.

15 I think it's important that she addresses  
16 your Honor as to what it is that happened because she  
17 did speak with her command and they advised her to go  
18 to traffic court.

19 So I don't want to be in a position where the  
20 officer is leaving the witness stand shirking the Court  
21 and any impression that she wasn't abiding by any  
22 subpoenas.

23 THE COURT: Just bring her in, please.

24 (Witness enters the courtroom.)

25 THE COURT: Officer Alfaro, just have a seat

1                   here for a moment.

2                   I understand -- and I don't know whether  
3                   there's some miscommunication with your presence being  
4                   here, I understand from the People that they subpoenaed  
5                   you last week to be here today.

6                   I expect a subpoena to be sent out sometime  
7                   in the next couple of days.

8                   I'm assuming you're going to be calling  
9                   Officer Alfaro for the trial.

10                  MS. JOHNSON: That is correct, your Honor.

11                  THE COURT: So obviously I would direct you  
12                  to be here for any subpoena in the future with respect  
13                  to this case.

14                  If there's any question whatsoever about what  
15                  takes priority, as far as this case is concerned, I  
16                  would ask you to call the assistant.

17                  And if there's any question, Ms. Johnson, or  
18                  any confusion --

19                  MS. JOHNSON: Of course, Judge.

20                  THE COURT: -- please speak to my chambers,  
21                  but as far as I'm concerned, just by way of example, a  
22                  Criminal Court case, County Court case, is going to  
23                  take precedence over any traffic court matter.

24                  I understand you may have been directed by  
25                  your command to go to traffic court. Why they would

1           think that that is more important or takes precedence  
2           over a County Court felony case, escapes me, but if  
3           there's any question or any doubt in your mind about  
4           where you should be, I would expect you to be here next  
5           week.

6           THE WITNESS: Yes. I do apologize for taking  
7           up the Court's time on that.

8           THE COURT: Okay, we'll see you here next  
9           week.

10          THE WITNESS: I'm not going to be needed for  
11           tomorrow?

12          THE COURT: No.

13          MS. JOHNSON: And the officer has my personal  
14           cell phone number.

15          THE WITNESS: Yes.

16          MS. JOHNSON: So if there's any problems  
17           obviously she knows where to contact me.

18          THE COURT: See you next week.

19          COURT OFFICER: She can go, right?

20          MS. JOHNSON: Yes.

21          (Witness excused.)

22          THE COURT: People, I think you said you're  
23           resting?

24          MS. JOHNSON: We do, your Honor.

25          THE COURT: Mr. Schechter?

Gopaul - Defendant - direct

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1 MR. SCHECHTER: I call the defendant.

2 THE COURT: All right, Mr. Gopaul, if you  
3 would, please, step forward?

4 H A R O L D G O P A U L, Defendant, having been first duly  
5 sworn by the clerk of the Court, was examined and  
6 testified under oath as follows:

7 COURT OFFICER: Take a seat.

8 DIRECT EXAMINATION

9 BY MR. SCHECHTER:

10 Q. Mr. Gopaul --

11 COURT OFFICER: Hold on.

12 For the record, state your name, spell your  
13 last name?

14 THE WITNESS: Harold Gopaul, G-o-p-a-u-l.

15 MR. SCHECHTER: May I proceed?

16 THE COURT: Yes.

17 Q. Mr. Gopaul, how old are you?

18 A. Now, I'm 51.

19 Q. Fifty-one years of age?

20 A. Yes.

21 Q. On June 24th, by whom are you employed?

22 A. Ecolab Pest Elimination.

23 Q. Ecolab?

24 A. Pest Elimination.

25 Q. And what was your position with Ecolab pest

Gopaul - Defendant - direct

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1 extermination?

2 A. Service specialist.

3 Q. Now, were you given a vehicle as part of your  
4 duties?

5 A. Yes.

6 Q. And were you the principal occupant and driver of  
7 that vehicle?

8 A. Yes.

9 Q. Anyone have permission to drive that vehicle but  
10 you?

11 A. No.

12 Q. Now, did you suffer any injuries to your person  
13 prior to June 24th, 2008?

14 A. No.

15 Q. Did you have any operations prior to June 24th,  
16 2008?

17 A. Yes, I did.

18 Q. And where was that operation?

19 A. I had a hernia on my naval, on my belly button, a  
20 few years ago.

21 Q. How many years ago, if you recall?

22 A. Give or take, could be four years.

23 Q. Do you suffer any lingering discomfort from that  
24 operation?

25 A. Off and on, I have pains in my belly.

Gopaul - Defendant - direct

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1 Q. Now, on June 24th, when for the last time --  
2 withdrawn.

3 When for the last time prior to June 24th had you  
4 had anything to eat?

5 A. Sunday before at 9 p.m.

6 Q. Now, Sunday would be what, June 2 --

7 A. 22nd.

8 Q. And why was that?

9 A. Because I don't eat too late. We went to a fair  
10 and we came back. I had some work done in the yard and then  
11 I had dinner and we went to bed.

12 Q. Why wasn't it you hadn't had anything to eat  
13 between Sunday June 22nd and June 24?

14 A. The reason why, I don't really eat outside. If I  
15 do buy food outside I take it home to the family. At that  
16 point in time I was working all day Monday straight through  
17 Tuesday morning and I don't eat meat, I don't drink alcohol,  
18 so the reason why I don't eat outside, because of the meat.

19 Q. When you came home from work on the evening of  
20 June 24th, was it, what, if anything, did you observe?

21 A. Well, I --

22 Q. You can answer the question.

23 A. My regular duties as a parent, I check for my  
24 kids, check for my wife, make sure everybody is in bed, I  
25 cover them if it's cold, I put a fan on, I'll take it off.

1 Q. Did you notice if anyone was missing?

2 A. Sana Awan was missing.

3 Q. Approximately what time was that?

4 A. Around a quarter to 2 in the morning.

5 Q. Where, if at all, did you go?

6 A. I told my wife -- we look in the garage, we looked  
7 downstairs in the basement, we looked up in the attic to see  
8 if she was there.

9 And then I noticed that the back door was unlocked  
10 so I told my wife, apparently Sana ran away.

11 Q. So where did you go?

12 A. I decided to go to the police to make a report.

13 Q. How far away is the precinct from your house?

14 A. A little more than a quarter mile.

15 Q. And how did you get there?

16 A. I drove the service vehicle that I had.

17 Q. And approximately what time did you get to the  
18 precinct?

19 A. About 2:30.

20 Q. And when you got to the precinct where did you go?

21 A. I stood by the door and one officer asked me, "Can  
22 I help you?"

23 Q. Describe the officer?

24 A. Tall, male, big in size.

25 Q. About how much taller -- was he taller than you?

Gopaul - Defendant - direct

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1 A. Yes.

2 Q. How much taller than you?

3 A. I would say about probably six to eight inches  
4 taller than me, give or take.

5 Q. And how much did he weigh, approximately?

6 A. Over 200 pounds.

7 Q. And what, if anything, occurred between you and  
8 the officer?

9 A. He came up to me and asked me, he said, "Can I  
10 help you?"

11 And I said, "I came to report my daughter is  
12 missing."

13 And he asked my name and address. He asked me  
14 where -- I told him where I lived and my name and address  
15 and he asked me why am I looking for my daughter.

16 I say, "I don't know. I just came home and I went  
17 looking for my kids in the bed and she was missing, so I  
18 decide to come and make a report."

19 About -- at that time there were a few officers  
20 there, give or take, nine or ten of them, they just came  
21 around where I was standing close to me and they all stood  
22 by me there.

23 Q. Could you please describe some of the officers?

24 A. They had a lot of white guys, they had a black guy  
25 and a -- I don't know what race they was. I know the white

Gopaul - Defendant - direct

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1 skin and black guy.

2 Q. What, if anything, occurred at that time that they  
3 surrounded you?

4 A. After they asked me the questions, the officer who  
5 asked me the question, he grabbed me by my hand and slammed  
6 me to the wall next to the front door.

7 Q. Please describe how he did that?

8 Describe to the Court how that happened?

9 A. Should I stand up or --

10 MR. SCHECHTER: May he demonstrate, Judge?

11 THE COURT: Yeah, go ahead.

12 A. This is the front door here. The officer was  
13 standing here. The rest of the officers was around him,  
14 close to me, and they were like moving closer.

15 When I finished answering the question he hold me  
16 by my hand and slammed me into the wall like this and put my  
17 hand behind my back.

18 Q. Go ahead.

19 A. And then he -- the cop said, "Put the cuff on  
20 him," and then one of the guy put the cuff on.

21 While they were putting the cuff on me they  
22 arrested me, they were pulling me, they ws spreading my legs  
23 as far as they can go. They were scratching and squeezing  
24 and tugging.

25 Q. Where did they scratch you?

Gopaul - Defendant - direct

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1 A. On my legs and on my hand.

2 Q. In what position did you wind up?

3 A. Well, after that they took me by my hand, with my  
4 hand up in the hair, I was like this (indicating).

5 Q. Indicating the arms displayed to the rear up in  
6 the air in reverse fashion?

7 A. Then they took me to the front of the counter and  
8 they slammed me into the counter with -- I don't know how  
9 many of them was pulling and tugging on me, the same thing  
10 they did at the front door.

11 And then they put a hand on my neck and was  
12 squeezing me on the counter.

13 I said, "Can I make a phone call to my wife? Can  
14 I tell her what's happening."

15 They said, "No fucking phone call for you," and  
16 they started using a lot of nasty languages, MF. They were  
17 using a lot of languages. No phone call.

18 While they were squeezing and pushing they went  
19 into my pockets and took everything I had on my body.

20 Q. Do you recall if any of those officers were  
21 wearing sergeant stripes?

22 A. In the midst of all this incident I didn't have  
23 time to even look around. They didn't want me to raise my  
24 head.

25 Q. Now, I would like to show you -- withdrawn.

Gopaul - Defendant - direct

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1           Did there come a time after you were finally  
2 released -- withdrawn. I withdraw that question.

3           Did there come a time when you -- another officer  
4 came to see you?

5           A. Yeah, a few minutes after a gentleman came and he  
6 introduced himself to me as Detective Shulman.

7           Q. And is that the same Detective Shulman who  
8 testified here today?

9           A. Yes.

10          Q. And what, if anything, did Detective Shulman do?

11          A. He took me by my hand and he took me upstairs and  
12 while he was taking me upstairs he keep pushing me up the  
13 stairs. I almost fell like three times.

14          Q. Where was your hands?

15          A. Handcuffed behind my back.

16          Q. And did you fall?

17          A. No.

18          Q. And where did he bring you?

19          A. He bring me to a room that they call the box.

20          Q. Did you see those photographs that we put in  
21 evidence before?

22          A. Yes.

23          Q. Was that the room that he took you to?

24          A. That's the room.

25          Q. And where did he put himself relative to you?

Gopaul - Defendant - direct

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1           A. Sitting on a chair with -- when he took me to the  
2 room he slammed me to the wall.

3           Q. How did he slam you to the wall?

4           A. He hold me by my shirt and push me to the wall.

5           Q. Show the Judge how he grabbed you by your shirt?

6                         THE WITNESS: May I stand up again?

7                         THE COURT: Yes.

8           Q. As if Shulman were in front of you, show him how  
9 he grabbed your shirt.

10                  Show the Court please?

11           A. He grabbed me like this and pushed me into it  
12 wall. Then he pulled me back up and pushed me onto the  
13 chair.

14                         MR. SCHECHTER: Indicating both hands on the  
15 sides of the collar pushing front, pulling back.

16           A. Yes.

17           Q. And then what did he -- did he say anything after  
18 he did that?

19           A. No, he took the handcuff off and he left. He left  
20 the room, he shut the door.

21           Q. And how long did he leave you there like that?

22           A. A couple -- a few minutes, about 15, 20, minutes I  
23 average. I didn't have anything on me to see the time.

24           Q. Would it be fair say this all occurred -- the time  
25 you came to the precinct to the time Detective Shulman got

Gopaul - Defendant - direct

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1 you, how much time elapsed, if you recall?

2 A. Until he got me, about 20 minutes.

3 Q. So it would be about between 2:30 and 3 o'clock,  
4 would that be fair to say?

5 A. Yes.

6 Q. In the morning?

7 A. Yes.

8 Q. And how long did he leave you in the room before  
9 he came back?

10 A. Give or take, about ten or 15 minutes. I don't  
11 recall the time.

12 Q. And when he came back what, if anything, did he  
13 say to you?

14 A. He asked me if I know why I'm here.

15 I say, "Yes I came to make a report, my daughter  
16 is missing."

17 He said, "Is there anything else you want to tell  
18 me?"

19 I said, "No, there's nothing I want to tell you.  
20 I just came to report that she's missing."

21 Q. Did he advise you of his rights -- your rights at  
22 that time?

23 A. No.

24 Q. So what happened then?

25 A. He left the room and he came back with some papers

Gopaul - Defendant - direct

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1       in his hands.

2           Q.    And were those the papers that you observed your  
3       signature on?

4           A.    No, it's some papers that had statement that he  
5       told me that my step daughter made, accusation against me.

6           Q.    Did he show you the papers?

7           A.    No, he read it for me.

8           Q.    What did he say to you?

9           A.    She -- he read some of it and he said that my  
10      daughter accused me of sexual harassment.

11          Q.    And what did you say to him?

12          A.    I said, "Well, this is not true."

13          Q.    What happened then?

14          A.    He said -- well, he started to read some more. He  
15      said, "Anything happen at the fair, morning of the fair?"

16           I said, "No, the only thing happened at the fair,  
17      we had an argument."

18           Then he said, "Is there anything you want to tell  
19      me?"

20           I said, "No, I don't want to tell you anything  
21      else. I just want to make a report that my daughter is  
22      missing."

23           But he keep nagging me and cursing at me and then  
24      he picked me up again. He said, "I put away people for 20  
25      years. I'm going to put you away for a longer time if you

Gopaul - Defendant - direct

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1 don't tell me what's going on."

2 Q. Did you ask for anything at that point?

3 A. I asked to make a phone call to my wife again.

4 They said, "No fucking phone call for you," again.

5 I said, "Can I speak to a lawyer?"

6 He say, "You're not going to get no lawyer. At  
7 this time you're not going to get no lawyer."

8 Q. What happened then?

9 A. He left the room and he came back.

10 Q. And when he came back what, if anything, occurred?

11 A. He sit and he was talking again and asking me  
12 question on what my daughter was -- the statement she was  
13 making. And he asked me again, "You want to tell me what  
14 happened?"

15 And I gave him the story about the fair, what  
16 happened at the fair.

17 Q. Did there come a time when he asked you to sign a  
18 waiver of rights?

19 A. When he finished talking about the fair he went  
20 back outside and he bring this other piece of paper with  
21 him.

22 Q. And what was that paper?

23 A. He said it was a memorandum or some paper he  
24 mentioned to me.

25 Q. Did you read the paper?

Gopaul - Defendant - direct

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1 A. He read the paper.

2 Q. And after he read it what did you do, if anything?

3 A. He put yes on the side of it and he told me to  
4 initial on the side of it. I didn't answer any of the  
5 question.

6 I asked him for a lawyer at the time again and he  
7 said, "You're not going to get no lawyer."

8 Q. When -- now, who wrote down the word yes?

9 A. He did, the officer did.

10 Q. And was that written before you were asked  
11 questions or after?

12 A. It came in the room with yes on the side of it, on  
13 the side of question.

14 Q. And what did you do?

15 A. Well, he made me initial them. He force -- he  
16 started to use threats at me and made me initial them.

17 Q. Did he make any threats or promises at that time?

18 A. At that time, no.

19 Q. All right. Did you sign that paper?

20 A. Yes, I did.

21 Q. Did you sign that paper voluntarily?

22 A. No.

23 Q. What happened after that?

24 A. He took the paper outside and he came back with a  
25 notepad and a pen.

Gopaul - Defendant - direct

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1 Q. How long did that transpire?

2 A. I would say about ten minutes again.

3 Q. And did you then -- what, if anything, did you do?

4 A. He asked me to write a statement on what happened  
5 at the fair, so I did write a statement on what happened at  
6 the fair.

7 Q. And was that a true account of what happened at  
8 the fair?

9 A. Yes.

10 Q. And after you wrote that account what, if  
11 anything, did he do?

12 A. He took the statement outside and then he came  
13 back again. He left the pen and the pad with me. He took  
14 the statement out and he came back. About ten or 15 minutes  
15 after he came back.

16 Q. What transpired then?

17 A. He asked me -- he told me what my daughter said.  
18 He told me -- he read from a paper that what she said and he  
19 asked me if I'm going to have to sign a confession paper on  
20 what she said.

21 I said, "Why are you doing this to me?" I said  
22 can I have a lawyer?"

23 He said, "No, you're not going to have no lawyer."  
24 He said, "I'm going to put you away for a long time," using  
25 bad words.

Gopaul - Defendant - direct

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1                   So he picked me up on the chair and he pushed me  
2 from the chair -- I was facing the door, on the back wall,  
3 and he said, "You're going to sign a confession for me."

4                   So I -- he said, "If you sign this confession I'm  
5 going to take this paper down to my supervisor. He's going  
6 to read it. At the end of the paper you're going to put,  
7 'I'm sorry and I made a mistake and I'm sorry,' and the  
8 supervisor is going to read the paper, going to feel sorry  
9 and say, 'This man need help,' and send me home."

10                  Q. Did he discuss with you what your daughter told  
11 him?

12                  A. Yes.

13                  Q. How long did that discussion take, please?

14                  A. Almost 20 minutes.

15                  Q. And did you sign that paper?

16                  A. The paper --

17                  Q. Did you sign another paper?

18                  A. Yes, I did sign another paper.

19                  Q. And was that the second confession that we  
20 observed in court earlier today?

21                  A. Yes.

22                  Q. And did that include a description of a vibrator?

23                  A. Yes.

24                  Q. Who drew the picture?

25                  A. He drew the picture.

ws

Gopaul - Defendant - direct

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1           Q.     And what did he say, if anything, at the time he  
2 drew the picture?

3           A.     He told me that my daughter accused me of using a  
4 vibrator on her and she described some -- he said she  
5 described a vibrator to him and that's the one he draw on  
6 the paper.

7           Q.     And what did you say with respect to the vibrator?

8           A.     I said this is no description of the vibrator that  
9 I have or massager. I use a massager, a folding massager.

10          Q.     Now, after that, what happened?

11          A.     He took the paper outside and then he came back  
12 and he had me sign a confession that I touched my daughter.

13          Q.     And how long after -- how long did it take from  
14 the time he left until the time he came back?

15          A.     Well, every time he go it's like 20 minutes, 15,  
16 20 minutes, ten, give or take. I didn't have a watch with  
17 me.

18          Q.     And what is the next thing that happened, if  
19 anything?

20          A.     He made me sign a paper, write with my own  
21 handwriting, this confession that I touched my daughter.

22          Q.     And after you signed that confession what happened  
23 then?

24          A.     I signed it. He said he going to take it to his  
25 supervisor and I'm going to soon be going home.

ws

Gopaul - Defendant - direct

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1           I asked him for a lawyer again, I asked him for my  
2 phone call to my wife, and he said no.

3           Q. All right, and then what happened?

4           A. He took the paper outside and he never came back  
5 for a long time after.

6           Q. How long?

7           A. A long while. I --

8           Q. More than an hour?

9           A. It could be.

10          Q. More than two hours?

11          A. I don't know. It could be hour and a half or two  
12 hour. I don't know.

13          Q. Did he tell you anything before he left?

14          A. No.

15          Q. Did he come back?

16          A. He came back awhile, long while after.

17          Q. And then what did he say, if anything?

18          A. He said just, "Before you go home I want you to do  
19 one thing for me. The same statement you gave on the paper,  
20 I want you to give testimony on video camera." He said,  
21 "The Assistant District Attorney is going to come in here  
22 and they're going to do a video camera on you."

23          Q. And did you ask him when?

24          A. No.

25          Q. All right, after he came and told you the

Gopaul - Defendant - direct

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1 District Attorney is going to come and take a statement from  
2 you, what happened?

3 A. I asked him for a lawyer again.

4 Q. And what happened then?

5 A. He said, "If you get a lawyer now then we start  
6 all over again. You're not going to go home. You're not  
7 going to go home." He said, "So you're not going to get no  
8 lawyer." He said, "When you come in, look at the camera.  
9 Look at the people who asked the question. Just try to be  
10 calm and answer questions."

11 Q. Did there come a time when the District Attorneys  
12 did come to the precinct?

13 A. Yeah, they came a long time after, very long time.

14 Q. Incidentally, you saw Officer Alfaro in this  
15 courtroom about ten minutes ago?

16 A. Yes.

17 Q. And she testified that she took you from the room  
18 downstairs.

19 Is that true?

20 A. No.

21 Q. Tell the Court what happened?

22 A. Ms. Alfaro came in. I don't know what time it  
23 was, but it was a long time after the videotape. It was a  
24 long time upstairs. She came and she came with  
25 Detective Shulman and he introduced her to me and then he

Gopaul - Defendant - direct

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1 give me a lecture about I'm a horrible person and a lot of  
2 nasty things he was saying to me in front of her.

3 And he said, "She's going to take you downstairs  
4 and process you and then you're going to go to the court in  
5 Queens."

6 Q. Now, there came a time after you made -- we saw  
7 the video statement you made in court?

8 A. Yes.

9 Q. Now, on that video statement you were read your  
10 rights on camera, is that correct?

11 A. Yes.

12 Q. You were also read the paper on camera and signed  
13 it on camera, is that correct?

14 A. Yes.

15 Q. Was that done freely or voluntarily?

16 A. At that point in time it was, but I was prompt by  
17 Mr. Shulman to do the same thing I did in the room.

18 Q. Well, did he say anything prior to you signing  
19 that confession or signing the waiver of rights?

20 A. In the room.

21 Q. What did he say?

22 A. He said, "The same paper you sign in here is the  
23 same question they're going to ask you outside. You do the  
24 same thing and give up that right."

25 Q. Did he promise you anything if you signed that

1 waiver?

2 A. With the District Attorney he said they're going  
3 to go and talk to the supervisors downstairs and I'm going  
4 to be going home. He said that's the last thing he wanted  
5 me to do before I go home.

6 Q. So prior to your waiving your rights  
7 Detective Shulman promised you that if you signed that  
8 waiver and made statements to the District Attorney you  
9 would be leaving and going home, is that correct?

10 A. Yes.

11 Q. Okay. Now, there came a time when you were  
12 brought -- let me ask you this.

13 When for the last time did you get any sleep prior  
14 to making any statements to Detective Shulman?

15 A. Sunday night.

16 Q. So how long have you been awake at the time that  
17 you went to the precinct?

18 A. Well, I left my house on Monday day around 6  
19 o'clock in the morning and I didn't go home until just  
20 before 2 o'clock Tuesday morning.

21 Q. So Tuesday morning at 2 o'clock you went home, but  
22 did you sleep at the time you went home?

23 A. No.

24 Q. And then you went to the precinct?

25 A. I did not sleep there either.

Gopaul - Defendant - direct

296

1           Q.     So you had not slept from Sunday at 6 o'clock  
2         through the time the statements were taken by the  
3         District Attorney, would that be fair to say?

4           A.     Yes, no sleep.

5           Q.     Were you offered anything to eat or drink by  
6         either Detective Shulman or the District Attorney?

7           A.     I was offered something to drink in the evening of  
8         when the District Attorney came. They give me a bottle of  
9         water.

10          Q.     And prior to that District Attorney giving you a  
11         bottle of water, which was over ten hours or 12 hours from  
12         the time you went to the precinct, did you have anything to  
13         eat?

14          A.     No.

15          Q.     Or drink?

16          A.     No.

17          Q.     Now, Detective Shulman testified that he gave you  
18         an opportunity to go to the bathroom.

19              Is that true?

20          A.     Yes.

21          Q.     When did that occur?

22          A.     Sometime in the day. I was in the room. I don't  
23         know if it's daylight or night, so I would say it was that  
24         day.

25          Q.     Aside from going to the bathroom did you have

ws

Gopaul - Defendant - direct

297

1 anything to eat or drink or did you get any sleep for over  
2 15 hours?

3 A. No.

4 Q. Now, there came a time when you were -- when you  
5 went to court, is that correct?

6 A. Yes.

7 Q. And there was a time when bail was set?

8 MS. JOHNSON: Objection.

9 THE COURT: I'll allow it.

10 Q. And bail was set for you, correct?

11 A. Yes.

12 Q. And there came a time when you made bail and you  
13 left the court?

14 A. No, I didn't make bail.

15 Q. Well, there came a time sometime afterwards that  
16 you were released from court after bail was made for you, is  
17 that correct?

18 A. I made bail from the jail.

19 Q. From the jail, okay.

20 Do you remember when that was?

21 A. I think it was Thursday the 27th.

22 Q. Thursday?

23 A. Yeah.

24 Q. And after left jail where did you go?

25 A. I came to your office.

Gopaul - Defendant - direct

298

1 Q. And after my office where did you go?

2 A. To the hospital.

3 Q. Which hospital did you go to?

4 A. Long Island Jewish hospital.

5 Q. And when you went to the hospital what, if  
6 anything, did you say?

7 A. I went to the emergency and I told them that --  
8 what happened to me and I needed to get a physical check.

9 Q. And while you were at the hospital were any  
10 pictures taken of you?

11 A. Yes.

12 Q. And who took those pictures?

13 A. My niece.

14 Q. What's her name?

15 A. Roxanne Seunarine, S-e-u-n-a-r-i-n-e.

16 MS. JOHNSON: Your Honor, if counsel is  
17 planning on showing pictures now, we haven't been privy  
18 to anything and it was part of a reciprocal demand  
19 months ago.

20 MR. SCHECHTER: I did not have an opportunity  
21 to give these pictures.

22 I also did not know until now that I would  
23 either be using them or not using them, but they are  
24 pictures of the injuries that my client has, in fact,  
25 sustained.

Gopaul - Defendant - direct

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1                   THE COURT: Okay, Mr. -- I have no problem  
2                   with you using the pictures.

3                   I just have one question.

4                   Did you ask him if he went to a hospital  
5                   after leaving your office?

6                   MR. SCHECHTER: Yes.

7                   THE COURT: And the answer was?

8                   THE WITNESS: Yes.

9                   MR. SCHECHTER: Yes, Long Island Jewish  
10                  Hospital.

11                  Q. Now, I would like to show you a series of  
12                  photographs.

13                  MR. SCHECHTER: I believe this is -- would be  
14                  Defendant's G for identification.

15                  Is that what we're up to?

16                  THE COURT: Defendant's G.

17                  MR. SCHECHTER: G, H, I, J.

18                  (Defendant's Exhibits G, H, I and J so marked  
19                  for identification.)

20                  Q. Mr. Gopaul, I show you Defendant's G, H, I and J for  
21                  identification.

22                  Do you recognize those photographs?

23                  (Shown to witness.)

24                  A. Yes.

25                  Q. Except for the fact that some of the wounds are

Gopaul - Defendant - direct

300

1 clotted, do those photographs fairly and accurately reflect  
2 how you appeared upon leaving the police precinct on  
3 June 24th, 2008 -- 2008?

4 A. Yes.

5 Q. And --

6 MR. SHECHTER: I ask that those be marked  
7 into evidence as Defendant's G, H, I and J?

8 THE COURT: Ms. Johnson?

9 VOIR DIRE EXAMINATION

10 BY MS. JOHNSON:

11 Q. Mr. Gopaul, who took those photos?

12 MR. SCHECHTER: Is this voir dire?

13 MS. JOHNSON: I'm sorry, if I may, Judge?

14 THE COURT: Yes.

15 Q. Who took those photos?

16 A. My niece.

17 Q. Where?

18 A. In Long Island Jewish Hospital.

19 Q. What date?

20 A. The night of the 27th, Thursday.

21 Q. June 27th, 2008?

22 A. Yeah, going into the morning time. I didn't check  
23 the time.

24 MS. JOHNSON: I have no objection.

25 THE COURT: Okay, so without objection

ws

Gopaul - Defendant - direct

301

they'll be received in evidence.

2 (Defendant's Exhibits G,H,I and J received in  
3 evidence.)

4 MR. SCHECHTER: For the record, your Honor, I  
5 will try to obtain duplicate copies of those for  
6 counsel. If I can't, I'll make photocopies for her.

THE COURT: Okay.

8 MS. JOHNSON: Thanks.

9 DIRECT EXAMINATION CONT'D

10 BY MR. SCHECHTER:

11 Q. All right, now, Mr. Gopaul, I direct your  
12 attention to those photographs.

13 Could you please look at them?

14 (Shown to witness.)

15 Q. Now, the first photograph that you're looking at,  
16 that's Defendant's G, what is that a photograph of?

17 A. Photo of my leg.

18 Q. And do you recall when you received those -- the  
19 injury?

20           A.     The morning of the arrest.   The morning of  
21     Tuesday, the 24th.

22 Q. And how did you receive that injury?

23           A. With the police officers pulling at me and  
24 scratching.

25 Q. All right, thank you.

Gopaul - Defendant - direct

302

1 I direct your attention to Exhibit H.

2 What is that?

3 A. L.

4 Q. Make sure that you looked at the right photo.

5 Look at the back.

6 COURT OFFICER: The last one was J.

7 MR. SCHECHTER: I apologize. Make that  
8 Exhibit J, the scratch on the leg. I stand corrected.

9 Q. Mr. Gopaul, please look on the back of the photo  
10 for the exhibit?

11 A. All right, this is H.

12 Q. What exhibit are you looking at now?

13 A. H.

14 Q. What does Exhibit H show?

15 A. This is my belly.

16 Q. And what is it a picture of?

17 A. The surgery that I had a few years ago.

18 Q. And what, if anything, happened at the precinct  
19 with respect to that area?

20 A. I had a lot of pain on my abdomen at that time.

21 Q. What was that pain from?

22 A. From the slamming on the counter.

23 Q. Okay, thank you.

24 A. From the police officers.

25 Q. And what are you looking at now?

Gopaul - Defendant - direct

303

1 A. I.

2 Q. I'm sorry?

3 A. I.

4 Q. And what is I a picture of?

5 A. My elbow.

6 Q. Sorry?

7 A. My arm.

8 Q. And do you see any injuries on that photograph?

9 A. Scratches, yeah.

10 Q. And what are those scratches from?

11 A. The police officers.

12 Q. And how were they incurred?

13 A. By pulling at me and scratching at me.

14 Q. And the last photograph, what number is that?

15 A. G.

16 Q. All right, what is that a photograph of?

17 A. It's my abdomen again.

18 Q. Sorry?

19 A. My belly.

20 Q. And that is the same injury that you had described  
21 before, the hernia operation?

22 A. Yes.

23 Q. And -- what -- when you struck the counter what  
24 part of your body came in contact with the counter?

25 A. Well, my belly hit the counter and then they

Gopaul - Defendant - direct

304

1 pushed my head, neck and everything down and they were  
2 holding it down on the counter.

3 Q. Now, you indicated you went to Long Island Jewish  
4 Hospital, correct?

5 A. Yes.

6 Q. And when you went to Long Island Jewish Hospital  
7 what were your complaints?

8           A.     The bruises, the scratches I had and the pain on  
9           my neck and my belly.

Q. I show you this document --

11 (Shown to counsel.)

12 Q. -- from Long Island Jewish Hospital.

13 MR. SCHECHTER: Let the record reflect I am  
14 showing it now to the District Attorney.

15 (Shown to counsel.)

16 Q. Now, Mr. Gopaul, can you identify this document?

17 MR. SCHECHTER: Please have it marked as, I  
18 think it's, K?

19 THE COURT: We'll mark it.

20 (Defendant's Exhibit K marked for  
21 identification.)

22 Q. Now, Mr. Gopaul, is that the medical record that  
23 you obtained from the hospital that you went to for  
24 treatment?

25 A. Yes:

Gopaul - Defendant - cross

305

1                   MR. SCHECHTER: I'll offer that in evidence,  
2 your Honor, as Exhibit K.

3                   THE COURT: Ms. Johnson?

4                   MS. JOHNSON: For the hearing, I have no  
5 objection.

6                   THE COURT: Marked Defendant's K in evidence.

7                   (Defendant's Exhibit K received in evidence.)

8                   MR. SCHECHTER: I have no more questions,  
9 Judge.

10                  (Shown to Court.)

11                  THE COURT: Just give me a second.

12                  (Pause in the proceedings.)

13                  THE COURT: Okay, Ms. Johnson.

14                  CROSS-EXAMINATION

15                  BY MS. JOHNSON:

16                  Q. Mr. Gopaul, do you read English?

17                  A. Yes.

18                  Q. Do you write English?

19                  A. Yes.

20                  Q. Do you have a high school diploma?

21                  A. Nope.

22                  Q. What's the highest level of school you completed?

23                  A. Elementary, seven standard. Not here, in my  
24 country.

25                  Q. And what country would that be?

Gopaul - Defendant - cross

306

1 A. Trinidad and Tobago.

2 Q. When you first walked into the precinct on  
3 June 24th, 2008 to report your daughter was missing, was it  
4 a police officer that you met with to speak to?

5 A. Yes.

6 Q. How many police officers did you end up speaking  
7 to while in the entranceway of the 105th Precinct?

8 A. One.

9 Q. One?

10 A. Yes.

11 Q. Then you tell us that other officers came around?

12 A. Yes.

13 Q. How many?

14 A. Eight or nine. Could be ten, give or take.

15 Q. Men and women?

16 A. No, only men.

17 Q. Were they in uniform?

18 A. Yes.

19 Q. What did they do?

20 Tell us exactly what they did to you?

21 A. When the officer -- the one officer came up to me  
22 and asked me what I came here for and I told him -- I give  
23 him my name and address, I give him my step-daughter name  
24 and address.

25 Then he took my hand --

ws

Gopaul - Defendant - cross

307

1 Q. Okay, I'm going to stop you for one second.

2 How did he take your hands?

3 A. He hold it with his hand.

4 Q. Your left hand or right?

5 A. My left hand first and he slammed me into the  
6 wall.

7 Q. How was he grabbing onto your left arm?

8 A. With his hand.

9 Q. Tight?

10 A. Yes.

11 Q. What was he saying?

12 A. When he hold me and slam me to the wall, at that  
13 time he tell the to guys cuff me.

14 Q. Before he slammed you to the wall what did he say  
15 before he grabbed your arm?

16 A. Nothing. He asked me that question and grabbed me  
17 and slammed me to the wall.

18 Q. What were the other officers doing when he grabbed  
19 your hand?

20 A. They were all using words and saying, "Cuff him."

21 Q. What were the words they were using?

22 A. They said, "Fucking cuff him. Cuff him."

23 Q. What else did they say?

24 A. They said, "Take him up to the box."

25 Q. All nine of them were saying that?

Gopaul - Defendant - cross

308

1 A. Well, I didn't count, you know.

2 Q. Were you able to see the officers?

3 A. No, they had my head down. They don't want me to  
4 look around.

5 Q. How were they holding your head down?

6 A. Well, I was against the wall, they had me against  
7 the wall.

8 Q. How did they slam you against the wall?

9 A. They hold my hand and turned me and pushed me into  
10 the wall.

11 Q. How many of them slammed you against the wall?

12 A. One. The first time it was one.

13 Q. And the first time being when you were at the  
14 entrance to the 105th Precinct?

15 A. Yes.

16 Q. What were the other officers doing while the one  
17 officer slammed you to the wall?

18 A. They start to pull and tug on me.

19 Q. And how long how were they pulling and tugging on  
20 you?

21 A. They had my hand behind my back, spread my legs,  
22 searching my pockets, squeeze my chest, my legs.

23 Q. All nine of them?

24 A. Well, as far as -- a lot of hands on me. I don't  
25 know if it was all nine, but all nine of them was around me.

Gopaul - Defendant - cross

309

1 Q. How many hands did you feel on you?

2 A. A lot of hands.

3 Q. More than one?

4 A. Yes.

5 Q. More man five?

6 A. Yes.

7 Q. How many voices did you hear?

8 A. There were many voices. I didn't count the  
9 voices, but there was more than one voice.

10 Q. Where on your body were the hands grabbing you?

11 A. All over my legs, my hands, my back, my belly.

12 Q. What about your face?

13 A. My face was against the wall.

14 Q. How did your face get against the wall?

15 A. With the officer slamming me to the wall.

16 Q. Did your face smack against the wall?

17 A. No. When he pushed me, my head was off the wall,  
18 but when they start to push me my head went into the wall.

19 Q. What's the wall made out of?

20 MR. SCHECHTER: Objection.

21 How does he know?

22 THE COURT: Presumably, he was there. Maybe  
23 he does know.

24 Do you recall what the wall was made of?

25 THE WITNESS: It could be sheetrock, it could

Gopaul - Defendant - cross

310

1           be concrete. I don't know.

2           Q.     Was it padded?

3           A.     I don't know.

4           Q.     You don't know if it was a padded wall?

5           A.     No.

6           Q.     Do you know if it was a concrete wall?

7           A.     Not for sure, no.

8           Q.     Was it hard?

9           A.     It was hard.

10          Q.     What did it feel like when your face slammed  
11           against the wall?

12          A.     I don't know, it was with so many people around me  
13           I didn't have time to think what wall it was.

14          Q.     How did it feel, though?

15          A.     Well, it feel like a wall.

16          Q.     Did it hurt?

17          A.     Yeah.

18          Q.     What type of pain did you feel?

19          A.     Pain.

20          Q.     Yes. What type of pain did you feel?

21          A.     I feel pain when they was pulling my legs open.

22          Q.     On your face where did you feel pain?

23          A.     I didn't feel pain on my face.

24          Q.     Your face made contact with the wall, but you  
25           didn't feel pain?

ws

Gopaul - Defendant - cross

311

1           A. They didn't slam my face to the wall, they just  
2         slammed me into the wall. My head was away from the wall at  
3         the time. Then they pushed my face into the wall.

4           Q. Well, when they pushed your face into the wall  
5         what part of your face made contact with the wall?

6           A. The side of my face.

7           Q. Which side?

8           A. The right side.

9           Q. Which part of the right side, your cheek?

10          A. Yeah, the whole side of my face.

11          Q. And when you say the whole side of the face does  
12         that mean your eye also?

13          A. No.

14          Q. Your cheek?

15          A. My cheek.

16          Q. Your jaw?

17          A. Well, my jaw is in front, so the side of my face.

18          Q. The side of your jaw?

19          A. Yes.

20          Q. That made contact with the wall as well?

21          A. Yes.

22          Q. And the wall was hard?

23          A. Yes.

24          Q. And your face was pushed against that hard wall?

25          A. Yes.

ws

Gopaul - Defendant - cross

312

1 Q. And what happened once your face was against the  
2 wall?

3 A. They put the handcuff on me.

4 Q. Who is they?

5 A. One of the officers put the handcuff on me.

6 Q. Were the other officers still around you?

7 A. Yes.

8 Q. What did they say to you once your face was  
9 against the wall?

10 A. They were using nasty languages.

11 Q. What were they saying?

12 A. They were saying, "Cuff the fucking guy," you  
13 know, "We're going to take him up. The chicken came home to  
14 roost."

15 Q. Who said the chicken --

16 A. One of the officers.

17 Q. Did you forget that on direct examination?

18 A. At that time, yeah.

19 Q. What position were your legs in when your face  
20 made contact with the wall?

21 A. It was spread apart.

22 Q. Who spread them out?

23 A. The officers.

24 Q. How many?

25 MR. SCHECHTER: Objection, been asked and

ws

Gopaul - Defendant - cross

313

1                   answered about three times already, Judge.

2                   THE COURT: Yeah, sustained.

3                   Q.     How far were your legs spread open?

4                   A.     As far as they can go.

5                   Q.     Were you on the ground or were you standing?

6                   A.     Standing.

7                   Q.     And what part of your legs were being touched?

8                   A.     My whole leg. From my calves, come all the way up  
9 to my groins.

10                  Q.     Did one of the officers touch your groin?

11                  A.     One of them touch. They were squeezing me.

12                  Q.     Where were they squeezing you?

13                  A.     All over, my legs, my hands, my belly, my groins,  
14 my back. They were squeezing me.

15                  Q.     Were you wearing long sleeves or short sleeves?

16                  A.     Long sleeve.

17                  Q.     A T-shirt under the long sleeve?

18                  A.     No.

19                  Q.     You weren't wearing a T-shirt under the long  
20 sleeve?

21                  A.     No.

22                  Q.     Did you have a chance to see the video that was  
23 played here?

24                  A.     Yes.

25                  Q.     You saw that before you came to court today?

Gopaul - Defendant - cross

314

1 A. Yes.

2 Q. So that saw that in your attorney's office?

3 A. Yes.

4 Q. And it's your testimony you weren't wearing a  
5 T-shirt underneath the long-sleeved shirt?

6 A. No.

7 Q. Were you wearing pants or shorts?

8 A. Long pants.

9 Q. Jeans or pants?

10 A. Cintas working pants. The brand-name pants. It's  
11 a working pants. Blue pants.

12 Q. Like a uniform pants?

13 A. Uniform pants.

14 Q. You drove the Ecolab vehicle to the precinct that  
15 day, right?

16 A. Yes.

17 Q. No one else had keys to it?

18 A. No.

19 Q. No one else was in it to your knowledge?

20 A. No, that I know.

21 Q. You hadn't given anybody else a key?

22 A. No.

23 Q. You hadn't seen anybody else drive it?

24 A. No.

25 Q. After your legs were spread what were the officers

Gopaul - Defendant - cross

315

1 doing?

2 A. They took me by my hand, as I showed before, and  
3 they pulled me into the front of the counter on the other  
4 side of the building.

5 Q. Tell us how they took your hands.

6 What did they actually do?

7 A. They put my hands above my head on my back and my  
8 head was like bending to the floor.

9 Q. Did your head make contact with anything?

10 A. No, not at that time.

11 Q. Did your head eventually make contact with  
12 something?

13 A. Yes, when they pushed me into the counter.

14 Q. When they pushed you into the counter what part of  
15 your body made contact with the counter?

16 A. My belly and my chest and shoulder part and they  
17 were pushing me down.

18 Q. What about your head?

19 A. My head was on the counter.

20 Q. How did your head come into contact with the  
21 counter?

22 A. By them pushing me down.

23 Q. Who is they?

24 A. The officers.

25 Q. And when you say that they pushed you into the

Gopaul - Defendant - cross

316

1 counter, what part of your head did they push into the  
2 counter?

3 MR. SCHECHTER: Objection, this is ad  
4 nauseam. I think she's gone through this four or five  
5 times already.

6 THE COURT: Yeah, sustained.

7 MS. JOHNSON: Can I see the pictures, Judge?

8 THE COURT: Which ones?

9 MS. JOHNSON: The ones that are in evidence.  
10 I don't think he has them.

11 THE COURT: I gave them back to somebody.

12 MR. SCHECHTER: Gee, I'm sorry, my bad.

13 (Shown to counsel.)

14 Q. Would you agree -- it's your testimony there was  
15 more than one officer that slammed your head into the  
16 counter?

17 A. Yes.

18 Q. I'm going to show you Defendant's Exhibit G.

19 (Shown to witness.)

20 Q. Can you show us on Defendant's Exhibit G where  
21 your -- where it was that your head made contact with the  
22 counter and with the wall in the precinct?

23 A. When they pushed me down my head turned on the  
24 side, the same right side when they pushing my shoulder.

25 I couldn't keep it down because the counter was

Gopaul - Defendant - cross

317

1 hard. I had to turning to the side.

2 Q. I'm asking you where it was on that picture?

3 A. On this side.

4 Q. And can you tell us where the injury is on your  
5 face that you sustained as a result of being pushed into the  
6 wall?

7 A. I didn't get injuries on my face.

8 Q. And you didn't get any injuries on your face when  
9 you were slammed into the counter?

10 A. They didn't slam my head on the counter, they  
11 slammed my chest and then they pushed my head down.

12 Q. I'm going to show you -- did you take a picture of  
13 your chest?

14 A. I didn't take any. My niece took the photos.

15 Q. Did anybody take a picture of your chest?

16 A. That, I can't recall. I don't know.

17 Q. Did you go to Mr. Schechter's office before or  
18 after you went to the hospital?

19 A. I went to his office before.

20 Q. So you went to Mr. Schechter's office first and  
21 then you went to Long Island Jewish?

22 A. Yes.

23 Q. And after you went to Mr. Schechter's office those  
24 pictures were taken?

25 A. Yes.

Gopaul - Defendant - cross

318

1 Q. I'm going to show you what's been marked as  
2 People's Exhibit 1 in evidence.

3 If you could take a look at that?

4 (Shown to witness.)

5 Q. Whose name appears on the bottom of that form?

6 A. This is my name.

7 Q. You wrote your name on there, correct?

8 A. Yes.

9 Q. You signed your name, correct?

10 A. Yes.

11 Q. You initialed your name, correct?

12 A. Yes.

13 Q. You initialed it on June 24th, 2008, correct?

14 A. Yes.

15 Q. In the presence of Detective Shulman, right?

16 A. Yes.

17 Q. His gun was not present, right?

18 A. Yes.

19 Q. His gun was present?

20 A. Yes.

21 Q. And what was he doing with his gun?

22 A. I don't know. He had it on his holster.

23 Q. Did he take it out?

24 A. No.

25 Q. But you saw it?

ws

1 A. Yes.

2 Q. And that gun was -- you saw that gun in the  
3 interview room?

4 A. Yes.

5 Q. Okay. Detective Shulman, read you the rights that  
6 appear in People's 1, correct?

7 A. He didn't read this to me. He bring it -- already  
8 had yes on it in the room.

9 Q. So by the time you saw that, yes was already  
10 written on the form?

11 A. Already on it.

12 Q. What about on the video?

13 You were provided almost the exact -- in fact, the  
14 exact same form on the video, correct?

15 A. Yes.

16 Q. Was yes on that document or --

17 A. No, the District Attorney put the yes on there.

18 Q. In your presence?

19 A. Yes.

20 Q. But Detective Shulman put yes before you got that?

21 A. Yes.

22 Q. And you initialed next to it after you read the  
23 paperwork?

24 A. I didn't read the paper.

25 Q. You weren't given that paper?

Gopaul - Defendant - cross

320

1 A. I didn't get it to read.

2 Q. So when was it that you put your initials next to  
3 it?

4 A. After -- when he bring it to me he said -- I asked  
5 him for a lawyer and I asked him for the phone call.

6 He said no. He said, "Right now you're going to  
7 sign me a confession," and he give me this to put my  
8 initials on the side of it.

9 Q. He handed you the piece of paper?

10 A. Yes.

11 Q. He handed you a pen?

12 A. Yes.

13 Q. You had that piece of paper in your hand, correct?

14 A. It was on the desk.

15 Q. And nobody else was in the room, right?

16 A. No.

17 Q. And you put your initials next to each one of  
18 those questions?

19 A. Yes.

20 Q. And nothing was covering that piece of paper,  
21 correct?

22 A. No.

23 Q. You were able to read it?

24 A. No.

25 Q. Why weren't you able to read it?

ws

Gopaul - Defendant - cross

321

1           A. I didn't have my glasses. I had to go down to  
2 read and I couldn't go down to read.

3           Q. What does the first line say?

4           A. You have the right to remain silent.

5           Q. Are you wearing your glasses now?

6           A. No.

7                         MS. JOHNSON: Can I have that back, please?

8                         (Shown to counsel.)

9                         THE COURT: Are you all right, Mr. Schechter?

10                  MR. SCHECHTER: Yeah, I just banged my leg,  
11 Judge. It's okay.

12                  MS. JOHNSON: Are you all right?

13                  MR. SCHECHTER: Yeah, I'm fine.

14                  Q. When you asked Detective Shulman if you can call  
15 your attorney, who was it that you were planning on calling?

16                  A. I didn't ask him to call my attorney. I asked him  
17 to call my wife.

18                  Q. Well, you said you asked Detective Shulman if you  
19 could speak to an attorney, correct?

20                  A. And I wanted a lawyer.

21                  Q. And who was it that you were going to call?

22                  A. I was going to call my wife to call a lawyer. I  
23 didn't have a lawyer at the time.

24                  Q. I'm going to show you what's been marked as  
25 People's Exhibit 2 in evidence.

ws

Gopaul - Defendant - cross

322

1 (Shown to witness.)

2 Q. Do you recognize that?

3 A. Yes.

4 Q. Whose signature appears on the bottom of that?

5 A. Mines.

6 Q. Whose name appears on the bottom of that?

7 A. My name.

8 Q. You signed your name on that?

9 A. Yes.

10 Q. You signed that in the presence of  
11 Detective Shulman, correct?

12 A. Yes.

13 Q. You read that form, right?

14 A. He read it for me.

15 Q. He read it out loud to you?

16 A. Yes.

17 Q. And then he gave it to you, correct?

18 A. Yes.

19 Q. Who signed and dated it?

Who put the date on it?

21 A. I put the date.

22 Q. You put the time as well, correct?

A. Yes, he told me the time, I put it on.

Q. You knew the date, right?

25 A. Until he told me, yes.

Gopaul - Defendant - cross

323

1 Q. Did you read that before you signed it?

2 A. Detective Shulman read it for me.

3 Q. So you just signed it?

4 A. Yes.

5 Q. I'm going to show you People's 3.

6 (Shown to witness.)

7 Q. You signed the bottom of People's 3, correct?

8 A. Yes.

9 Q. You dated it, correct?

10 A. Yes.

11 Q. You wrote your name on it, correct?

12 A. Yes.

13 Q. That was read to you, correct?

14 A. Yes.

15 Q. That was provided to you?

16 A. Yes.

17 MS. JOHNSON: I'm sorry.

18 (Shown to counsel.)

19 Q. And both of those consent forms were given to you  
20 after Detective Shulman read you those Miranda rights,  
21 correct?

22 A. He didn't read the rights to me.

23 Q. Those two consent forms were signed after he read  
24 you those rights, correct?

25 A. He didn't read the rights to me.

ws

Gopaul - Defendant - cross

324

1 Q. Okay. I'm going to show you the first statement  
2 that you gave Detective Shulman, People's 4.

3 (Shown to witness.)

4 Q. Is it fair to say Detective Shulman provided you  
5 with a blank pad and pen?

6 A. Yes.

7 Q. That was after he read your Miranda rights,  
8 correct?

9 A. He didn't read the right.

10 Q. The pad was blank when it was given to you,  
11 correct?

12 A. Yes.

13 Q. Now, you testified before on direct that he  
14 prompted you to write that statement, correct?

15 A. He had his notes with him and he was telling me  
16 what to write on the paper. Most of it is what he made me,  
17 from his notes. He asked me question from his notes. He  
18 told me what my stepdaughter said on his notes and then he  
19 had me do this paper.

20 Q. Tell us how it is that he made you write that  
21 piece of paper?

22 A. Well, by using languages, bad languages, to me and  
23 screaming at me.

24 Q. What was that bad language that he was using?

25 A. He was saying if I don't sign this fucking thing

Gopaul - Defendant - cross

325

1 I'm not going to go home. He was using the MF word.

2 Q. What's an MF word?

3 A. Motherfucker. He was using those words at me.

4 He was over me on the table. He was like leaning  
5 like almost want to grab me.

6 Q. When you say he was leaning almost like he was  
7 going to grab you, he didn't grab you, right?

8 A. No, he didn't grab me, but his hand was out.

9 Q. And what was his hand doing?

10 A. His hand was in my face.

11 Q. What was his hand doing in your face?

12 What do you mean by that?

13 A. Talking and waiving at me.

14 Q. Talking with his hands?

15 A. Just wavering, yeah.

16 Q. Did his hands ever make contact with your body?

17 A. When he slammed me to the walls, yeah.

18 Q. So when he slammed you to the wall how does it  
19 come about that his hands are on your body?

20 A. He hold me by my shirt.

21 Q. How was he holding you by your shirt?

22 A. Grabbed my shirt and pushing me to the wall, slam  
23 me to the wall.

24 Q. What part of your body made contact with the wall?

25 A. My back.

Gopaul - Defendant - cross

326

1 Q. Your entire back?

2 A. Yes.

3 Q. Did you have pain?

4 A. Yes.

5 Q. Where did you have the pain?

6 A. On my neck and shoulders.

7 Q. Did you have trouble sitting after that?

8 A. I was uneasy with it.

9 Q. You had the opportunity to see the video, right?

10 A. Yes.

11 Q. You were able to move your arms in the video,  
12 correct?

13 A. Yes.

14 Q. You lifted your arms, right?

15 A. Yes.

16 Q. You moved your arms, correct?

17 A. Yes.

18 Q. You were able to describe how you were touching  
19 your daughter by using your arm movements, correct?

20 A. Yes.

21 Q. Did you ever complain of any pain on that video?

22 A. No.

23 Q. Did you ever ask for medical attention on the  
24 video?

25 A. No.

ws

Gopaul - Defendant - cross

327

1 Q. Did you ever see any weapons drawn on that video?

2 A. No.

3 Q. Did you ever get threatened by any of the DAs on  
4 that video?

5 A. No.

6 Q. Anybody lay a hand on you on that video?

7 A. No.

8 Q. Did you ever ask to speak to a lawyer on that  
9 video?

10 A. They asked me if I wanted to speak to a lawyer,  
11 but the detective told me if I ask for a lawyer I'm not  
12 going to go home, it going to be worse for me, it's going to  
13 be worse, so just do the same thing, sign the Miranda that I  
14 did in the room and they going to take it up to the  
15 supervisor downstairs and they going to have an agreement to  
16 send me home.

17 Q. Nobody told you on that video what to say,  
18 correct?

19 A. No.

20 Q. You were free to answer questions, correct?

21 A. Well, I was free to answer question, but I was  
22 scared of the detective.

23 Q. And what do you mean by you were scared of him?

24 What were you afraid he was going to do?

25 A. Probably going to take me back to the room and do

Gopaul - Defendant - cross

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1 something to me again. I don't know.

2 Q. What were you afraid he was going to do?

3 A. Slam me to the wall, hit me or something.

4 Q. Were you afraid of the prosecutor?

5 A. No.

6 Q. Were you afraid of the videographer?

7 A. No.

8 Q. And what was it about the detective's presence in  
9 that video that you were concerned about?

10 A. After the interview, what they going to do to  
11 me -- what he going to do to me.

12 Q. What did he say he was going to do to you?

13 A. He didn't say nothing at the time.

14 Q. He didn't tell you he was going to beat you up  
15 after the video?

16 A. No.

17 Q. He didn't show his gun to you during the video?

18 A. No.

19 Q. You had the opportunity while that video was being  
20 taped to ask for an attorney, correct?

21 A. Yes.

22 Q. You had the opportunity to stop that video,  
23 correct?

24 A. Yes.

25 Q. You had the opportunity to say you no longer

ws

Gopaul - Defendant - cross

329

1 wanted to answer any questions, correct?

2 A. Yes.

3 Q. You had the opportunity to tell the DA that this  
4 video was over, correct?

5 A. Yes.

6 Q. You didn't have any trouble moving your arms on  
7 the video, correct?

8 A. No.

9 Q. Did you ever make a complaint with Internal  
10 Affairs about what Detective Shulman allegedly did to you?

11 MR. SCHECHTER: I'm going to object.

12 He has two pending indictments against him.

13 Making a complaint to Internal Affairs with another  
14 statement when he has counsel is not exactly the  
15 appropriate thing to do.

16 It's an improper question.

17 MS. JOHNSON: Judge, he's saying that police  
18 officers beat him up.

19 Obviously, if there's any merit to it I have  
20 the right to inquire as to whether or not he made a  
21 complaint about it.

22 MR. SCHECHTER: If he makes a complaint with  
23 another statement he's further incriminating himself,  
24 Judge. He has a right to counsel.

25 THE COURT: I'm going to overrule the

Gopaul - Defendant - cross

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1 objection.

2 Q. Did you make a complaint to Internal Affairs about  
3 Detective Shulman?

4 A. No.

5 Q. Did you make a complaint to Internal Affairs about  
6 any of the officers?

7 A. No.

8 Q. Did you make a complaint to the precinct about any  
9 of the officers?

10 A. No.

11 Q. Did you make a phone call to the precinct about  
12 what they did to you?

13 A. No.

14 Q. Did you tell the detective in Nassau County what  
15 Detective Shulman did to you?

16 A. I don't recall.

17 MS. JOHNSON: I'm going to ask that this be  
18 marked as People's 8 and 9 for identification.

19 MR. SCHECHTER: Can I see them, please?

20 (Shown to counsel.)

21 MR. SCHECHTER: Your Honor, I'm going to  
22 object.

23 Counsel intends to show the witness something  
24 that happened well -- over one month after the incident  
25 and it's an interview sheet regarding his present

Gopaul - Defendant - cross

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1 condition after he was arrested in Nassau County. It  
2 has no relevance here.

3 THE COURT: I have, obviously, no idea what  
4 she's marking and what the exhibit is.

5 Do you want to make an offer?

6 MS. JOHNSON: Yes, Judge.

7 It's the 79, physical condition  
8 questionnaire, taken in Nassau County where -- my offer  
9 of proof is the defendant is asked is he in good  
10 health, does he have any injuries --

11 THE COURT: And when is he asked those  
12 questions?

13 MS. JOHNSON: July 31st, 2008.

14 THE COURT: So what bearing would that have  
15 on what took place from June 24th to June 27th?

16 MS. JOHNSON: Because defendant is saying he  
17 had an injury from a hernia that was exacerbated by  
18 these police officers. That would have been in the  
19 paperwork.

20 MR. SCHECHTER: He just said he's in pain.

21 THE COURT: If that's your offer, the  
22 objection is sustained.

23 MR. SCHECHTER: Thank you, Judge.

24 MS. JOHNSON: Sustained as to the questions  
25 or the offering of the documents, your Honor?

Gopaul - Defendant - cross

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1                   THE COURT: It's sustained as to the document  
2                   and any questions relating to what he may have been  
3                   asked a month later.

4                   Q. Mr. Gopaul, the statement -- the first statement  
5                   that you gave to Detective Shulman regarding what happened  
6                   at the fair, was that statement true or false?

7                   A. It's true.

8                   MR. SCHECHTER: Objection, that's improper.  
9                   Thirty years that's been an improper question, to ask  
10                  the truth or falsity of the statements.

11                  THE COURT: Would you just read back the  
12                  question, please?

13                  (Record read.)

14                  MR. SCHECHTER: Withdraw the objection.

15                  THE COURT: And you answered that,  
16                  Mr. Gopaul?

17                  A. Yes.

18                  Q. Yes, it's true?

19                  A. Yes.

20                  Q. And it's your testimony that you were forced into  
21                  giving a true statement?

22                  A. No, I gave the truth on that statement.

23                  Q. After you were issued Miranda warnings?

24                  A. Yes.

25                  Q. Okay. And as to the second statement that you

ws

Gopaul - Defendant - cross

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1 gave to Detective Shulman, was that an accurate --

2 A. Can you repeat?

3 MR. SCHECHTER: Now I'm going to object to  
4 that statement.

5 The law is, Judge, that it's improper at a  
6 Huntley Hearing to ask the witness, the defendant,  
7 whether or not the statement made was true.

8 I think it's been the law for 30 years. I  
9 had the case. I read it yesterday. Unfortunately, I  
10 can't find it, but I looked at that possibility.

11 THE COURT: I'm going to sustain the  
12 objection.

13 MS. JOHNSON: I didn't ask him if it was the  
14 truth, I asked him if it was accurate.

15 MR. SCHECHTER: Same idea.

16 THE COURT: Truth, accuracy. Quite frankly,  
17 I think they're interchangeable under these  
18 circumstances.

19 I also would think, Ms. Johnson, you could  
20 anticipate what the answer will be to that question.

21 MS. JOHNSON: As would I, most likely (sic).

22 Q. Mr. Gopaul, you also indicated on direct that that  
23 was Detective Shulman who drew the picture of the vibrator?

24 A. Yes.

25 Q. Was that following a conversation that you had

Gopaul - Defendant - cross

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1 with him?

2 A. Yes.

3 Q. And was that following a conversation about a  
4 vibrator?

5 A. Yes.

6 Q. You signed that piece of paper, correct?

7 A. Yes.

8 Q. You signed it underneath the question and answer,  
9 is that fair to say?

10 A. If I see the paper I'll know. I think so.

11 Q. Sure.

12 MS. JOHNSON: Give me one second.

13 (Pause in the proceedings.)

14 Q. Well, let me ask you this.

15 Was there already a picture of a vibrator on the  
16 piece of paper when you signed that paper?

17 A. No.

18 Q. So the picture of the vibrator was put after you  
19 signed it?

20 A. No, it was before. No, it was put before I signed  
21 the paper.

22 Q. So the vibrator was on the piece of paper before  
23 you signed it?

24 A. Yes.

25 Q. After a conversation you had with

Gopaul - Defendant - cross

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1 Detective Shulman about vibrators that you had?

2 A. Yes.

3 Q. And you indicated that you were provided with a  
4 bottle of water?

5 A. Yes, from the ADA.

6 Q. And you were permitted to go to the bathroom?

7 A. Not at that time.

8 Q. Well, you were permitted to go to the bathroom,  
9 correct?

10 A. Yeah, but I didn't have to use the bathroom at  
11 that time.

12 Q. You saw the video yesterday?

13 A. No, I was on the back of it.

14 Q. You've seen the video before?

15 A. I saw it before.

16 Q. Do you see any injuries on your face?

17 A. No.

18 Q. Do you see any injuries on your hands?

19 A. No.

20 MR. SCHECHTER: I'm going to object.

21 He never claimed there were injuries to his  
22 face or hands, Judge.

23 The injuries were to his neck, his belly, his  
24 arms and his legs.

25 He never said anything about his hands.

Gopaul - Defendant - cross

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1 THE COURT: The record will speak for itself.

2 MS. JOHNSON: I have nothing else.

3 MR. SCHECHTER: No redirect.

4 THE COURT: Mr. Gopaul, you testified before  
5 that you were released from jail.

6 In other words, you were brought to court,  
7 you were arraigned and then you bailed out, am I right?

8 THE WITNESS: When they set the bail for me  
9 my wife didn't reach in time or I think she didn't have  
10 the money at the time, so the time ran out on the court  
11 and they had to put me in the Bronx.

12 THE COURT: So you were transferred to --

13 THE WITNESS: To the Bronx.

14 THE COURT: -- to a correctional facility in  
15 the Bronx?

16 THE WITNESS: The boat?

17 I think they call it the boat.

18 THE COURT: The what?

19 THE WITNESS: The boat.

20 THE COURT: And when you went over to that  
21 facility was there any type of medical screening given  
22 to you at that point --

23 THE WITNESS: Yes.

24 THE COURT: -- by people at the New York City  
25 Correctional Department?

Gopaul - Defendant - cross

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1 THE WITNESS: Yes.

2 THE COURT: And did they ask you if you had  
3 any injuries?

4 THE WITNESS: Yes.

5 THE COURT: Did you say whether or not you  
6 had any injuries similar to what you said in  
7 Defendant's K in evidence?

8 THE WITNESS: No, no.

9 THE COURT: All right.

10 Anybody have any questions as a result of  
11 mine?

12 MS. JOHNSON: I was just going to ask -- I'm  
13 assuming those are not the complete medical records  
14 from LIJ.

15 If counsel is planning on offering them --

16 MR. SCHECHTER: It's an emergency room. He's  
17 only in the emergency room.

18 THE COURT: Okay. Thank you very much.

19 MS. JOHNSON: Can I actually ask just a  
20 couple of questions?

21 THE COURT: Yes.

22 MS. JOHNSON: Just briefly.

23 Q. Mr. Gopaul, were you housed with other inmates in  
24 the Bronx?

25 A. Yes.

Gopaul - Defendant - redirect

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1 Q. Were you housed with other inmates at the  
2 105 Precinct?

3 A. No.

4 Q. Were you housed with other inmates at  
5 arraignments?

6 A. Yes.

7 Q. In one big cell?

8 A. Yes.

9 MS. JOHNSON: I have nothing else.

10 REDIRECT EXAMINATION

11 BY MR. SCHECHTER:

12 Q. Mr. Gopaul, did you have any scuffles with any  
13 other inmates while you were in jail?

14 A. No.

15 THE COURT: Okay, you can have a seat.

16 (Witness excused.)

17 THE COURT: Mr. Schechter --

18 MR. SCHECHTER: May it please the Court, your  
19 Honor, I understand the reason for your Honor's  
20 questions regarding the outcry of Mr. Gopaul when he  
21 was at the facility in the Bronx.

22 The question really -- with all due respect,  
23 your Honor, no allegation has been made that Mr. Gopaul  
24 suffered lasting or permanent injuries.

25 Rather, the proffer has been made that the

1                   police officers set upon him and at the time they set  
2                   upon him he was pulled, prodded, scratched, bruised,  
3                   bent and suffered these injuries and under compulsion  
4                   made these -- waived his rights and made these  
5                   statements.

6                   There's never been any allegation that the  
7                   injuries he sustained were permanent. It doesn't have  
8                   to be permanent.

9                   As a matter of fact, the police are very  
10                  well-schooled in how to utilize physical force to  
11                  extract confessions or to extract what they want to  
12                  extract without causing observable injuries.

13                  THE COURT: If I could just interrupt you.

14                  My question to you was, and maybe I wasn't  
15                  clear, are you resting?

16                  MR. SCHECHTER: I rest.

17                  THE COURT: Okay. So now you're making  
18                  closing arguments?

19                  MR. SCHECHTER: I am.

20                  THE COURT: Go ahead.

21                  MR. SCHECHTER: If it please the Court, your  
22                  Honor, it is respectfully submitted that the statements  
23                  that were extracted from my client were extracted from  
24                  him after protracted, protracted, delays.

25                  As a matter of fact, I still haven't

1           gotten -- and I ask the Court to draw an unfavorable  
2           inference against the prosecution because of the  
3           failure to provide the required discovery material,  
4           namely the early entries of that log that we had  
5           already requested and based upon what counsel said  
6           there has been no equivocation about us wanting that  
7           log.

8                 They have been stonewalling us with officers,  
9           stonewalling us with information, stonewalling us with  
10           discovery information from the Police Department.

11               Your Honor, my client testified he was at  
12           that precinct approximately 2:30, that when he got to  
13           the precinct he was set upon by approximately nine to  
14           ten officers who manhandled him, threw him against the  
15           rail, threw him against the wall, scratched him in the  
16           course of having him handcuffed and searched and then,  
17           shortly thereafter, Detective Shulman came and took him  
18           upstairs, threw him up the steps, he almost fell, but  
19           he did not fall, went into the room. Detective Shulman  
20           grabbed him by the collar, threw him against the wall  
21           and pushed him back.

22               If your Honor looks at that, as I'm sure you  
23           did because I drew your Honor 's attention to it in the  
24           video, my client's collar is quite distended and it's  
25           very consistent that the distension of his collar is

1           consistent with someone who grabs someone, spreads the  
2           collar, throws him and pushes him back. There's no  
3           reason for his collar to look like that absent somebody  
4           using that kind of force against him.

5           It is apparent, your Honor, that my client  
6           was the victim of force. Police officers, for their  
7           own particular reasons or prejudices, felt that they  
8           needed to act forcefully against my client.

9           It was in that atmosphere that Detective  
10          Shulman, who also acted forcibly against my client,  
11          attempted to extract a confession from him.

12          After he then physically abuses him he then  
13          gives him the life preserver. This is the technique  
14          called the Reid technique that is used by the police  
15          departments, even though he denied its use. You first  
16          act violently, make the person desperate, then you  
17          throw out the life preserver. The life preserver is  
18          you make a confession, you're going home.

19          Everybody, especially those who are not  
20          familiar with the criminal justice system, everyone  
21          grabs for that life preserver. They'll say anything  
22          they want them to say thinking they're going home.  
23          That's what Detective Shulman did to my client.

24          Thereafter, with that in mind,  
25          Detective Shulman wanted to keep that going so that

1           when my client was about to give the video statement  
2           Detective Shulman promised him, "Look, all you got to  
3           do is tell that same thing to the DA you told me."

4           You get a cop -- rather, "You get an  
5           attorney, then we're going back to square one and  
6           you're not getting out of here. I'm just warning you  
7           right now before you go and speak to the District  
8           Attorney."

9           So that force, those actions by the  
10          detective, were not in any way ameliorated or had any  
11          kind of separation from the initial physical abuse that  
12          my client suffered. There's not been any attenuation  
13          of that because Detective Shulman saw that there was  
14          not going to be an attenuation by continuing the abuse  
15          and the threats and the life preserver, namely that my  
16          client, if he makes a statement to the District  
17          Attorney, will be released.

18           That was the atmosphere under which he gave  
19          the statements. They were statements which were forced  
20          out of him. They were extracted out of him at pointed  
21          fists, not by reason, not by an intelligent waiver.

22           He had requested an attorney. Those requests  
23          were completely tossed aside by Detective Shulman. My  
24          client, as he said, was going to call his wife to get  
25          an attorney.

1                   He did not, at that point, know he had -- an  
2                   attorney would be appointed for him because by that  
3                   time Detective Shulman said, "You're not getting any  
4                   attorney," so he had no expectation of getting an  
5                   attorney and for that reason he, at that time, felt  
6                   isolated, he felt alone, which is what they want to do.

7                   He was kept, your Honor, from 2:30 in the  
8                   morning on June 24th until the following night, until  
9                   around a quarter to 9. That's a long time to be in  
10                  custody, Judge, especially with no sleep, no food and  
11                  one bathroom break.

12                  Now, under those circumstances the  
13                  confessions that were extracted from him were done  
14                  absent a reasonable and thoughtful and unforced waiver.

15                  The consents obtained to search his vehicle  
16                  were extracted in the same methodology. He gave those  
17                  with the same abuse in his mind.

18                  Therefore, the consents to search were also  
19                  not done properly and they were extracted violently and  
20                  for those reasons I'm respectfully asking that the  
21                  Court suppress the statements that were made by my  
22                  client, suppress the evidence seized from his vehicle  
23                  and from his house, and for those reasons I  
24                  respectfully ask the Court grant that relief.

25                  THE COURT: People, before you begin, I am

1           directing you -- because I had my law secretary check  
2           to see if, perhaps, somebody faxed over the first sheet  
3           of that log sheet.

4                         I am asking to you produce that for  
5                         Mr. Schechter.

6                         And, Mr. Schechter, if need be, if you need  
7                         to make whatever application you feel you need to make  
8                         upon reviewing it, I'll let you.

9                         He's entitled to it and, quite frankly, I  
10                        think he should have had it already.

11                        Do you want to say anything?

12                        MS. JOHNSON: I do. I don't know if you  
13                        wanted me to make a phone call.

14                        THE COURT: You can do it after, because  
15                        obviously we're not going to get it before 4:35.

16                        MS. JOHNSON: And if I have it after the  
17                        close of business of court, I'll fax it to Court and  
18                        counsel.

19                        Your Honor, it's our position, and the  
20                        evidence has shown beyond a reasonable doubt, that not  
21                        only did the defendant knowingly, voluntarily and  
22                        intelligently waive his Miranda rights, his right to  
23                        counsel, but he also was adequately advised of his  
24                        Miranda rights.

25                        I'll first address counsel's arguments.

1                   Your Honor, this is an issue of credibility  
2                   as to whether or not the Court is going to believe what  
3                   the defendant says or whether or not the Court is going  
4                   to believe what the detective says.

5                   In order to believe what the defendant says,  
6                   that he was roughed up by nine police officers, that  
7                   they slammed him against the wall, they slammed him in  
8                   the interview room, they slammed him against the  
9                   counter, it belies logic.

10                  When the court looks at the very photographs  
11                  that the defendant has submitted, there is no injury on  
12                  the defendant's face.

13                  There is a scratch on his body and there's a  
14                  bruised belly button from a previous hernia surgery.

15                  Not only did the defendant's own pictures not  
16                  comport with his own testimony, but the very video that  
17                  was played in court, the defendant is lifting his arms,  
18                  moving his arms, making hand gestures, able to answer  
19                  questions, no injury on his face. The defendant even  
20                  admits there's no injury on his hands.

21                  The defendant's own video, the capturing of  
22                  his own image, both by himself and by the videographer,  
23                  let's just say, doesn't even comport with his own  
24                  testimony as to what happened.

25                  In fact, Judge, he never made any complaints

1 to anybody about any injury. He never made any  
2 complaints on the video, never asked to speak to an  
3 attorney on the video.

4 I think that the very tone of how the video  
5 was taken, the conversational aspect of it between the  
6 defendant and the DAs and the defendant and even  
7 Detective Shulman, it belies logic that the defendant  
8 was even laid a hand on by any members, much less nine  
9 officers or Detective Shulman.

10 Be that as it may, Judge, the Court has seen  
11 the Miranda form signed by the defendant on 5:15 -- at  
12 a 5:15. Detective Shulman testified he read it to the  
13 defendant, he himself indicated yes and the defendant  
14 signed, initialed, this document.

15 It was dated. It was timed.

16 Detective Shulman's testimony should be  
17 deemed by the Court as credible that the defendant not  
18 only wrote his name, but signed his name after the  
19 Miranda warnings were issued.

20 We submit to the Court that this is an  
21 adequate issuance of Miranda rights. The defendant  
22 knowingly waived it. He was read these rights. He was  
23 provided the copy of it. He signed it.

24 There was no indication, no testimony from  
25 Detective Shulman, that at any time was his gun

1 present, that the defendant asked to speak to an  
2 attorney, that the defendant asked to cease the  
3 interview.

4 In fact, Detective Shulman indicated the  
5 defendant was quite cooperative with him. He was not  
6 handcuffed. There was no force used upon him nor any  
7 threats.

8 In fact, Judge, the defendant was provided --  
9 as far as the written statements go, the defendant was  
10 provided a blank piece of paper to make two statements  
11 to Detective Shulman in his own handwriting where the  
12 defendant himself provided his own information, the  
13 date, the time.

14 It belies logic that Detective Shulman, who  
15 testified that his gun was fully secured,  
16 Officer Alfaro, who corroborated Detective Shulman that  
17 it's Police Department police to secure their weapon --  
18 none of the People's witnesses indicated that any  
19 threats any force or any coercion was used upon this  
20 defendant to sign a true statement in the defendant's  
21 own words as to what happened with his daughter at the  
22 fair.

23 Detective Shulman indicated unequivocally  
24 that at no time did the defendant have any questions.

25 In fact, the defendant made his own changes

1           on one of the documents when he changed the date. He  
2           changed the date from the 22nd to the 21st.

3                 At no time did he ask to speak to an  
4                 attorney, did he indicate he wanted to cease the  
5                 interview or that he had any questions.

6                 There was no language barrier. There was a  
7                 conversation and, in fact, a tone of cooperativeness  
8                 with Detective Shulman that continued onto the video.

9                 After the Miranda was issued, after the first  
10                statement was signed, after both consent forms were  
11                signed by the defendant -- which I'll actually note,  
12                your Honor, not one question out of defense counsel's  
13                mouth to Detective Shulman was about the consent forms  
14                signed by the defendant. Nothing was questioned of  
15                Detective Shulman about the defendant being provided  
16                the consent forms, being read the consent form or even  
17                signing it.

18                 The second statement, we submit to the Court,  
19                 just like the first one, was a knowing, voluntarily,  
20                 intelligently-obtained statement.

21                 This defendant again was provided a pen and a  
22                 piece of paper.

23                 Detective Shulman indicated no threats were  
24                 made to the defendant, no promises were made, no gun  
25                 was present, no coercion was used and, again, the

1 defendant was handcuffed -- the defendant was  
2 handcuffed, in fact, brought to the restroom at the  
3 defendant's own request.

4 As to the question and answer and the  
5 photograph that was drawn by the defendant after  
6 Miranda was issued, after Miranda was waived, again,  
7 Detective Shulman indicated that the defendant drew  
8 this picture, never asked to speak to an attorney,  
9 never asked to cease the interview, that there was, in  
10 fact, a rapport between the two of them and the  
11 defendant was willing to speak to him.

12 I think, your Honor, the video speaks for  
13 itself. At no time during the video were any weapons  
14 present. At no time were any physical force, threats  
15 coercion or any physical tactics used upon the  
16 defendant.

17 In fact, counsel said and the defendant said  
18 that the detective told the defendant that all he had  
19 to do was repeat what he told Detective Shulman in the  
20 video.

21 If the Court looks at the video, that's not  
22 even what happened. The defendant gave more  
23 information, more details and expanded his statement,  
24 so obviously it belies logic that the detective would  
25 have told the defendant that he must repeat what he

1           gave the detective when the defendant himself gives  
2           more information on the video.

3           Your Honor, we have the luxury of having an  
4           actual videotaped statement here rather than simply  
5           relying on what I do submit to the Court is credible  
6           testimony by the detective.

7           At no point does the defendant complain of  
8           any injury, ask to cease the interview, ask to speak to  
9           an attorney. He's provided Miranda warnings again,  
10          he's read them by the District attorney.

11          In fact, he continues his conversation with  
12         Detective Shulman on the video when Detective Shulman  
13         asks him questions in the presence of the District  
14         Attorney -- in fact, both Assistant District Attorneys.

15          We would submit to the Court, your Honor,  
16         that based on the fact that the Miranda warnings were  
17         knowingly, voluntarily, intelligently waived,  
18         adequately supplied, adequately read, the defendant not  
19         only orally waived them, but waived them in writing and  
20         at no time invoked his right to counsel.

21          We would submit to the Court that the  
22         statements, the two written statements, the question  
23         and answer, as well as the video that was subsequent to  
24         another Miranda warning, as well as the property that  
25         was received, we submit that all of that should be

1                   permitted to be introduced by the People on our direct  
2                   case.

3                   THE COURT: All right, speaking of the video,  
4                   is the waiver form that was signed in that video, I'm  
5                   assuming that's separate and distinct from the one that  
6                   Detective Shulman referred to at the -- when he  
7                   initially met the defendant?

8                   MS. JOHNSON: That is what my understanding  
9                   is by looking at the video, your Honor, because when  
10                  the Assistant District Attorney gives the video to --  
11                  gives the Miranda form to the defendant, I believe he  
12                  addresses again that, "This is a Miranda form similar  
13                  to the one that had been provided to you before," and  
14                  the defendant is observed on the video signing it yet  
15                  again.

16                  MR. SCHECHTER: I don't think it was offered  
17                  in evidence, Judge.

18                  THE COURT: That's my point. I've only seen  
19                  one Miranda waiver form that's allegedly signed by the  
20                  defendant.

21                  In other words, my question is, there appears  
22                  to be a separate Miranda form that was produced during  
23                  the beginning -- during the videotaped confession  
24                  that's referred to by the assistant DAs from Queens, is  
25                  there not?

1 MS. JOHNSON: There is, your Honor, and the  
2 substance of that video that is read again to the  
3 defendant and the defendant orally, on the video,  
4 waives those rights yet again and is observed on the  
5 video signing that document again.

6 THE COURT: Right, but do we know where that  
7 document is?

8 MS. JOHNSON: I believe it was already  
9 provided.

10 THE COURT: Well, in any event, Ms. Johnson,  
11 you're relying upon the video and -- with respect to  
12 the waiver insofar as the videotaped confession is  
13 concerned.

14 MS. JOHNSON: I am relying on both the  
15 Miranda warnings that were issued by Detective Shulman  
16 that continued and I'm also relying on the additional,  
17 sort of like a belts and suspenders, that was issued to  
18 the defendant on the video.

19 It's our position, your Honor, that the  
20 waiver that was signed by the defendant in the presence  
21 of Detective Shulman was still sufficient on the video.  
22 We rely on that and we also rely on the additional  
23 Miranda given on the video by the prosecutor.

24 MR. SCHECHTER: The best evidence of the  
25 waiver is the document itself, Judge, which was never

1 produced or admitted.

2 THE COURT: Well, that's why I asked if the  
3 People are relying upon what -- I mean, obviously the  
4 videotape is in evidence and I assume that that's what  
5 they're relying upon.

6 All right, I'm going to reserve decision  
7 until tomorrow at this point. It's getting a little  
8 late.

9 Just a couple of matters before we go.

10 I have ordered a panel for tomorrow  
11 afternoon. It's my hope that we'll begin jury  
12 selection at some point tomorrow afternoon.

13 After my decision tomorrow we need to  
14 address, counsel, your motion in limine.

15 MR. SCHECHTER: Yes.

16 THE COURT: People, I've not received any,  
17 although -- and I trust that you'll have case law for  
18 the Court as well as counsel.

19 MS. JOHNSON: Yes, Judge.

20 THE COURT: That you provide it to us as soon  
21 as possible because I want to get that out of the way  
22 before, obviously, jury selection starts.

23 Mr. Schechter, I know my law secretary has  
24 been looking at some of these documents I indicated  
25 that we received in response to the subpoenas.

1                   I would like to take a look at them myself.  
2                   Hopefully, I'll be able to do it this evening. I  
3                   haven't had a chance, obviously, today, and as soon as  
4                   I can I will provide them to you.

5                   MR. SCHECHTER: Thank you, Judge.

6                   THE COURT: Just in terms of as you leave, in  
7                   terms of jury selection, Mr. Schechter, I know you  
8                   haven't tried a case in front of me.

9                   I don't know, Ms. Johnson, if you have.

10                  MS. JOHNSON: We were in the midst of it last  
11                  time.

12                  THE COURT: So you are somewhat familiar.

13                  I don't use a questionnaire, Mr. Schechter.  
14                  I do cover topics with the jurors myself about  
15                  background, law enforcement, victim of a crime,  
16                  testifying in the grand jury or criminal/civil  
17                  proceeding.

18                  I do cover rather extensively beyond a  
19                  reasonable doubt in my pre-charge, police witnesses,  
20                  that they should be treated like anybody else, burden  
21                  of proof as well as presumption of innocence.

22                  I mean, there may be something I may be  
23                  missing from here.

24                  If you want me to charge that no inference,  
25                  adverse inference, is to be drawn with respect to your

1           client should he choose not to testify, please remind  
2           me of that tomorrow.

3           MR. SCHECHTER: I do, your Honor.

4           As a matter of fact, if my client doesn't  
5           testify I do request that that be charged to the jury.

6           THE COURT: Just let me know before we begin,  
7           this way I'm alerted to it.

8           MS. JOHNSON: Are we reporting here tomorrow?

9           THE COURT: You're going to be reporting here  
10          at least in the morning. Where I'll be in the  
11          afternoon is anybody's guess.

12          Twenty minutes the first round, 15 minutes  
13          each succeeding round.

14          What we usually do is get about 75 people in  
15          so, you know, by the time the second round is done  
16          everybody has kind of heard each of your respective  
17          voir dires.

18          MR. SCHECHTER: My concern, your Honor, I  
19          respect that kind of analysis, however under the facts  
20          of this case, because of the nature of the charges and  
21          because of the type of community we have here out in  
22          Nassau County, the predispositions or the possible  
23          prejudices of the individual jurors vis-a-vis the  
24          allegations, which based upon what I know about the  
25          case, could result in some inflammatory testimony on

1                   the part of the complainant, I need to try to ascertain  
2                   from the individual jurors whether the fact of the  
3                   allegations of a case are such that they would not be  
4                   able to be fair and impartial and that's a subjective  
5                   issue.

6                   THE COURT: Well, of course it's a subjective  
7                   issue what I generally do is I usually -- I should have  
8                   prefaced my comments with regard to jury selection  
9                   saying I generally pre-charge -- not pre-charge, I  
10                  pre-screen.

11                  I'm going to tell the jurors to expect to be  
12                  here for at least two weeks, that if anybody has a  
13                  planned vacation, medical procedure, business trip, any  
14                  issue with health care or elder care, that they can't  
15                  sit, that we get rid of them, if you will. So the  
16                  panel of people that we have are people that we know at  
17                  least can sit.

18                  And I generally will ask the jurors -- I'll  
19                  tell them a little bit about the case. Obviously, I'm  
20                  not going to say too much and essentially say is there  
21                  anybody here, because of the nature of the charges,  
22                  feels that they cannot be fair and impartial.

23                  I mean, obviously you can explore that in  
24                  your jury selection.

25                  MR. SCHECHTER: Okay.

Proceedings

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1                   THE COURT: I'm not going to do an individual  
2 questioning of the 14 prospective jurors as to their  
3 subjective beliefs. I think we'll know pretty quickly  
4 who's willing to sit on this kind of case and who's  
5 not.

6                   All right, Ms. Johnson, please call this  
7 detective.

8                   MS. JOHNSON: I will, Judge. I have his cell  
9 phone number, I'll call him.

10                  THE COURT: And get this time log here and  
11 I'll see all of you here tomorrow about 10 o'clock.

12                  MR. SCHECHTER: Thank you, Judge.

13                  (Proceedings adjourned to Wednesday, May 6th,  
14 2009 at 10 o'clock a.m.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X  
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment  
5 : No. 2415N/08  
6 -against- :  
7 HAROLD GOPAUL, : Sex Abuse 1  
8 :  
9 Defendant. : Huntley/Mapp  
10 -----X Hearings

11 May 6, 2009

12 252 Old Country Road  
13 Mineola, New York

14 B E F O R E:

15 HONORABLE JAMES P. McCORMACK,  
16 Acting Supreme Court Justice

17 A P P E A R A N C E S:

18 (As previously noted.)

19 \* \* \* \* \*

20 THE CLERK: This is the continued hearing,  
21 the People against Harold Gopaul, Indictment 2415N of  
22 2008.

23 MS. JOHNSON: For the People, Jamie Johnson.

24 MR. SCHECHTER: On behalf of the defendant,  
25 Harold Gopaul, Donald R. Schechter, 80-02 Kew Gardens  
Road, Kew Gardens, New York.

THE COURT: As I indicated at our bench

1 MS. JOHNSON: Yes, Judge.

2 With regards to the People's Molineaux  
3 application, the People seek to introduce on our direct  
4 case evidence surrounding the physical and sexual abuse  
5 of the victim in this matter by this defendant that  
6 occurred in Queens County that involves not only  
7 slapping and hitting the victim, but particularly with  
8 regards to the sexual abuse involving touching of her  
9 vagina, touching --

10 THE COURT: I'm sorry to interrupt you, just  
11 give me one minute.

12 MS. JOHNSON: Sure.

13 (Pause in the proceedings.)

14 THE COURT: I'm sorry, go ahead.

15 MS. JOHNSON: Your Honor, with regards to the  
16 sexual abuse allegations the People seek to admit  
17 evidence on our direct case regarding particular  
18 instances of sexual abuse and the general course of  
19 abuse between this defendant and the victim;  
20 specifically, touching of her breasts, touching of her  
21 vagina, instances of force, including threats, force  
22 including physical abuse, as well as displaying of  
23 weapons to the complainant.

24 Your Honor, it is our position, and the case  
25 law we believe supports us, that this -- these prior

1           bad acts of sexual abuse and physical abuse, not only  
2           the circumstances surrounding them, but the threats  
3           that accompany them, are relevant and probative and  
4           permissible under Molineaux.

5           With regards to motive, intent, absence of  
6           mistake by the defendant, we submit that it is  
7           admissible to explain all those factors.

8           It is also admissible to show the narrative  
9           of the events that occurred in Nassau County as well as  
10          why the victim disclosed the abuse when she did, how  
11          she disclosed it, who she disclosed it to, the timing  
12          of her disclosure and to explain the relationship she  
13          had with this defendant.

14          As the Court's aware, the 14 counts in the  
15          indictment all have an element of force that the People  
16          have to prove beyond a reasonable doubt, the element of  
17          force being in the mind of the victim, how she felt and  
18          her state of mind regarding why she feared the  
19          defendant. Not only why she feared him at the time of  
20          each instance, but how that fear progressed.

21          So, first, with regards to motive and intent,  
22          I provided counsel and the Court with two cases,  
23          People v. Jackson and People versus Brown, where  
24          particularly in sex abuse cases - and you'll excuse me,  
25          I'm just going to pull that out now - in

1 People v. Jackson the court held that in sex crimes  
2 where there is prior sexual abuse against a particular  
3 victim, when a defendant expresses his desire to engage  
4 in future sexual misconduct with that same victim, it  
5 is evidence of that -- such as that to establish the  
6 defendant's motive and the defendant's intent.

7 Here, the defendant himself on video and the  
8 victim herself will testify that the defendant  
9 expressed to her that he wished for her to -- that he  
10 wished that he be the one and that he wished to  
11 escalate their relationship to future sexual contacts,  
12 particularly sexual intercourse.

13 We submit that People v. Jackson and  
14 People versus Brown supports our introduction of that  
15 statement and the testimony surrounding his future  
16 intent to engage in additional sex abuse with her.

17 People v. Jackson is a Court of Appeals case  
18 from 2007 where, in a rape prosecution, evidence of  
19 prior uncharged sexual assaults against even another  
20 person was admitted appropriately to demonstrate  
21 defendant's future intent to rape the victim in that  
22 particular trial.

23 There was a statement that the witness was  
24 able to testify to where the defendant expressed his  
25 future intent to her for his intent to engage in a sex

1                   crime against her.

2                   That's exactly the situation we have here.

3                   We don't even have speculation as to whether or not the  
4                   victim knew about that intent. The defendant himself  
5                   on the video and the victim herself heard the  
6                   defendant's statement of the future intent as he  
7                   expressed it directly to her.

8                   With regards to People versus Brown, that is  
9                   a Third Department case from 2007. In  
10                  People versus Brown the court held where there was  
11                  statements of future intent by the defendant against  
12                  the very same victim, the court ruled, and the  
13                  Appellate Division upheld, that this was probative and  
14                  admissible to establish a future intent to have sexual  
15                  contact with the victim as well as to show the threat  
16                  of the defendant's future desires.

17                  Not only did the court rule that it was  
18                  probative and admissible for intent, but the court also  
19                  indicated that it was relevant background information  
20                  to explain the events that were the subject of the  
21                  trial.

22                  Your Honor, even more importantly, not only  
23                  the statement of his future intent, but it is the  
24                  circumstances surrounding it that the jury must be made  
25                  to understand.

1                   None of the defendant's statements of future  
2 intent or his threats to her or the force occurred in a  
3 vacuum. They all occurred during other instances of  
4 sexual conduct and sexual abuse.

5                   It is not as though the defendant simply  
6 pulled her to the side during dinner and said, "You're  
7 going to be the one and we're going to have sex on a  
8 particular date."

9                   It was during other instances of abuse where  
10 he was touching her vagina, placing his mouth on her  
11 vagina, touching her breasts and having her touch his  
12 penis that these conversations took place.

13                  As to absence of mistake, your Honor,  
14 People versus Young, which is a case from 1984, touches  
15 upon not only in sex crimes why this type of testimony  
16 is evidence to show lack of mistake, but the court even  
17 goes so far to explain that in situations where there  
18 is an intimate relationship, and I don't mean a sexual  
19 relationship, a relationship of trust and a  
20 relationship of authority, the trier of fact must  
21 understand how it is that the defendant, when there's  
22 an element of force, exerted his control and exerted  
23 his authority to engage in the sexual abuse.

24                  In People versus Young, that's a  
25 Fourth Department case from 1984, the court goes

1       through all the elements of Molineaux and goes so far  
2       as to say, "Where evidence of the prior uncharged  
3       sexual contacts between the defendant and his daughter  
4       was directly probative of the crime charged and was  
5       necessary to aid the fact finder in determining the  
6       defendant's intent, it was admissible."

7                  The court even says that in situations to  
8       convict a father of an intimate caressing touch, even  
9       of a sexual part, the court must be careful to have  
10      clear and convincing evidence beyond a reasonable doubt  
11      of the defendant's intent.

12                 And it was because of the court's concern  
13      about the intimate authority relationship and  
14      father-figure relationship in Young that the court  
15      allowed evidence of the defendant's prior touching to  
16      show that it wasn't simply a mistake of a  
17      father-daughter relationship, it was actually to show  
18      the motive and to show the intent and to show the lack  
19      of mistake because of the prior abuse.

20                 THE COURT: Wait, let me just interrupt you  
21      for a moment.

22                 You started off by saying that you're looking  
23      to show prior instances of sexual abuse as well as a  
24      course of history of sexual abuse between the defendant  
25      and the complainant.

1                   Obviously, there comes a point, I think you  
2 would agree with me, that in terms of the number of  
3 instances you're looking to elicit that are not part of  
4 your indictment, there's going to come a point where  
5 the scale is going to tip to the point where the  
6 evidence is going to become more prejudicial than its  
7 probative value for the reasons that you're looking to  
8 introduce.

9                   You've mentioned on a number of occasions an  
10 incident where you claim that your complainant said  
11 that the defendant here told her, "I want to be the  
12 one," and had spoke of a future date in which he was  
13 going to have sexual intercourse with the complainant.

14                  And I think if I understand your theory of  
15 your case, that's what prompted her to go to the police  
16 or leave the house, whatever the circumstances may be.

17                  I would hope that you're not looking to  
18 introduce every prior act that he's charged with in  
19 Queens County. I don't know how many there are. From  
20 speaking to both you and Mr. Schechter it's obvious  
21 that there's more instances -- and maybe I'm wrong, but  
22 it sounded as though there's more instances he's  
23 currently facing charges on in Queens as opposed to  
24 this court.

25                  MS. JOHNSON: That's correct. We are not

1                   looking to introduce every single instance in Queens,  
2                   we're looking for the appropriate balance so the jury  
3                   can understand.

4                   THE COURT: I know what you're espousing  
5                   here, but for me to be able to give a ruling and for  
6                   Mr. Schechter, obviously, to be able to respond, what  
7                   instances are you -- instead of telling me  
8                   generalities, what is it are you looking to elicit?

9                   MS. JOHNSON: We're looking to elicit when it  
10                  was that the abuse began.

11                  THE COURT: In terms of the time?

12                  MS. JOHNSON: Correct.

13                  The nature of the progress of it without even  
14                  particularizing dates, your Honor. If she can even  
15                  say, "While I was a certain age," or over the course of  
16                  a year it progressed from a touching to a kissing to  
17                  more invasive touching, that type of conduct.

18                  We're not looking for the victim to take the  
19                  witness stand and make out, beyond a reasonable doubt,  
20                  all the elements of the Queens indictment. That's not  
21                  what the purpose of this is.

22                  The purpose is so that the jury is not seeing  
23                  a girl on the witness stand saying that her step-father  
24                  or father abused her without understanding that this is  
25                  not just something that happened in a vacuum.

1                   In fact, there was a grooming process in  
2                   Queens County and a grooming process where this  
3                   behavior not only escalated, but the threats escalated,  
4                   the abuse escalated and the relationship changed.

5                   I think it's important that the jury  
6                   understand --

7                   THE COURT: Well, relationship changed in  
8                   what sense?

9                   From father-daughter to sexual encounters  
10                  that did not have the element of force, then at some  
11                  point -- I don't know.

12                  MS. JOHNSON: Yes, Judge.

13                  THE COURT: At some point there was an  
14                  element of force that was introduced into it?

15                  MS. JOHNSON: Yes, Judge. At first there was  
16                  not an element of force and the touching was, I hate to  
17                  say, as a statutory, but there was no threat, there was  
18                  no coercive environment. It was not a threat as we  
19                  have in this environment, but a threat in the course of  
20                  environment simply based on the father figure  
21                  relationship and where it occurred and how it occurred.

22                  The defendant would say to this girl, to his  
23                  daughter, don't tell anybody. Whether that would rise  
24                  to the level of force is certainly an argument, but  
25                  that type of coercive environment was how the

1           relationship began and how it progressed into actual  
2           force, both expressed and implied, and it is because it  
3           started out as don't tell anybody, happening in  
4           private, happening in their own home, in the safety of  
5           her home, which is why she didn't disclose and she  
6           trusted him and why the relationship was able to  
7           escalate.

8                         There is a specific instance that occurs in  
9                         the bathroom, for example, in Queens County where they  
10                  were in the bathroom together. The defendant is making  
11                  comments about her breasts, making comments about her  
12                  body, picks her up, puts her on the sink and puts his  
13                  mouth on her vagina and begins performing oral sex on  
14                  her while her own mother is in the home.

15                  We're not here to litigate those instances,  
16                  we're here to have the victim explain that it is this  
17                  type of behavior that put in her mind a fear to even  
18                  tell her mother what was going on because it was during  
19                  that type of abuse that the defendant said to her,  
20                  "Don't tell anybody. You have to be quiet. Nobody is  
21                  allowed to know about this."

22                  It's very difficult --

23                  THE COURT: Is that coupled with some overt,  
24                  or perhaps not overt, threat of force?

25                  MS. JOHNSON: That particular instance was

1           not a direct threat of force, but there were instances  
2           in Queens where the defendant did threaten her with a  
3           knife and threatened to cut her finger off.

4           That force that occurred that is part of a  
5           charge in Queens is certainly relevant and probative to  
6           establish the force elements that we have in these  
7           charges because, we may cross county lines, but the  
8           threat in her mind began in Queens and the threats of  
9           him cutting her finger off began in Queens during other  
10          sexual abuse.

11          As to the narrative aspects of how the abuse  
12          took place, certainly it's relevant and probative to  
13          explain how her relationship with the defendant  
14          escalated, how he escalated the abuse, how it was that  
15          he was able to progress the relationship from touching  
16          to kissing, to touching under the clothes, to touching  
17          with force.

18          That escalation is necessary for the jury to  
19          explain that one day he just doesn't pick her up, drive  
20          her to Nassau County and start touching her vagina.  
21          That's not what happened here and we're unfortunately  
22          in a position here -- and I believe it is unfortunate  
23          that we are trying to case before the Queens case is  
24          being tried and we're in a position where, because  
25          we're trying this case first, it's even more important

1 for the jury to understand what happened preceding what  
2 happened in Nassau County.

3 THE COURT: Well, quite frankly, I think that  
4 if you were trying -- the Queens case had already been  
5 tried, obviously -- or the incidents here had predated  
6 the Queens case, I don't think I would be entertaining  
7 your application at this point.

8 MS. JOHNSON: If the Queens incidents  
9 occurred after this case I agree with your Honor, it  
10 might not be relevant and probative to her state of  
11 mind because her state of mind wouldn't have had -- she  
12 wouldn't have known about the force and she wouldn't  
13 have known about the threats because it happened after.

14 THE COURT: Because obviously I'm thinking,  
15 should I grant your application, that I have to  
16 obviously limit the number of instances.

17 MS. JOHNSON: I agree with your Honor.

18 THE COURT: So what is it that you're  
19 proposing?

20 MS. JOHNSON: We would ask that the victim be  
21 able to testify as to when the abuse began, what type  
22 of touching and what type of contact occurred in Queens  
23 County, what type of threats and how the threats  
24 occurred, under what circumstances.

25 Obviously, if I was to ask her on the witness

1 stand, "When was the first -- how did the relationship  
2 change," I would obviously prepare my witness not to  
3 get up on the witness stand saying on this date and  
4 this date this is how it began.

5 It would be a narrative of, "He began  
6 touching me when I was 13 or 14 in my home and the  
7 touching escalated to kissing, it escalated to under  
8 the clothing."

9 And I would ask her, similar to how the  
10 questions were sort of posed to her in the grand jury,  
11 "And were you in fear of him," an element which I must  
12 prove.

13 "Why was it that you were in fear of him?"

14 "Because he had threatened me before. And he  
15 had threatened me before when he was touching me. He  
16 threatened to cut my fingers during other instances  
17 when he was touching me," that type of questioning,  
18 your Honor, because that is how the background  
19 information should come in and, obviously, as your  
20 Honor has the ability to, which most of the cases  
21 reference, the Court has the ability to fashion a  
22 curative instruction to the jury as to how they are to  
23 consider this evidence, be it as narrative, be it as  
24 motive, be it as intent.

25 And we would agree with the Court that the

1           Court should fashion for the jury so that they do  
2           understand why the information is being offered. I  
3           would agree and I'm assuming Mr. Schechter would make  
4           this argument, the Court has the ability to give the  
5           curative to the jury, not only before the witness  
6           testifies, but after she testifies and even during the  
7           jury charge.

8                 But we're in a situation here where, as an  
9           element we must prove being force, the prosecution  
10           should not be hampered because that force occurred  
11           during other bad acts that are charged in another  
12           indictment.

13               It is the very reason that it is probative,  
14           because it occurred during other sexual abuse, during  
15           other instances for which he's charged.

16               Your Honor, the Court had provided -- and I'm  
17           going to get to the Leeson case in a moment, but also  
18           with regard to prompt outcry and the timing of her  
19           disclosure, I don't believe it's in question at this  
20           point that the victim did not disclose the abuse for  
21           several years. It began and it escalated and finally  
22           at the point where the defendant had said to her that  
23           she was going to be the one -- that he was going to  
24           have sexual intercourse with her, that she decided to  
25           run away from home.

1                   In People versus Archibald, which is a 2007  
2 case I provided to the Court, that is a  
3 First Department case, the court held that evidence of  
4 prior sexual abuse is relevant to explain the timing of  
5 the victim's reporting and why she waited more than a  
6 year to report.

7                   Here she not only waits to report because  
8 she's in fear, but because there was a relationship of  
9 trust and she was afraid to tell anybody what, not a  
10 stranger, but what her own father was doing to her.

11                  THE ATTORNEY: Objection, that's a  
12 mischaracterization of the relationship.

13                  MS. JOHNSON: Stepfather, that he's raised  
14 her since three years old, which the defendant on the  
15 video refers to her as his daughter anyway, but not  
16 blood, a stepfather.

17                  Here, where the abuse takes place over years  
18 and the threats occur during other instances, that is  
19 relevant to why she disclosed and when she disclosed  
20 because certainly she's going to be able to testify  
21 that she didn't outcry to her best friend, she didn't  
22 outcry to her mother and she didn't feel safe outcryng  
23 to either one of them for quite a long period of time.

24                  THE COURT: Let me ask you, when does she --  
25 when you talk about the allegation that the defendant

1       claimed he wanted to be the one, is that -- in terms of  
2       context, does that also happen when he allegedly says  
3       to her, "We're going to have sexual intercourse on a  
4       particular date?"

5                 I mean, I may be incorrect in my knowledge,  
6       but I thought that he had, according to your  
7       allegations, picked a certain date that he was going to  
8       have these -- have this sexual intercourse with her and  
9       that's what prompted her to leave the house.

10          MS. JOHNSON: He did, Judge, he did. He gave  
11       her a date and he gave her a specific date that they  
12       were going to have intercourse and I believe days  
13       before that was going to happen, or if not a day  
14       before, that she packs her bags and runs away. But it  
15       is that progression up to that point of where he  
16       threatens that they're going to have intercourse that  
17       all those acts occur in Queens County during other  
18       instances of sexual abuse.

19                 But, more importantly, even more so with the  
20       element of force, as the jury charge reads, it is the  
21       state of mind of the victim that controls.

22                 It is not whether or not the defendant was  
23       going to have sex with her or even really planned on  
24       having sex with her, which we believe he was, but,  
25       either way, People versus Thompson, which I've provided

1 to the Court, outlines -- that's a Court of Appeals  
2 case from 1988, outlines what it is that must be  
3 established in order to establish this element of force  
4 and as the court says, "Whether threats amount to  
5 forcible compulsion or not is not what the defendant  
6 would or could have done, but it is the victim  
7 observing the defendant's conduct, fearing he would or  
8 might -- " " -- what he might do if she did not comply  
9 with his demands."

10 It is exactly that fear and exactly the  
11 defendant's conduct that is relevant here and that  
12 conduct occurred in Queens during other instances of  
13 sexual abuse.

14 In fact, the court in Thompson says that  
15 where the defendant is -- was more than twice the  
16 victim's age and was in a position of power, this  
17 evidence was even more so relevant and probative.

18 Here there is no question there was an  
19 authority figure in possession of power. It was her  
20 stepfather, somebody who has raised her since she's  
21 three years old.

22 People versus Thompson also says that these  
23 prior instances are relevant and probative to show what  
24 the victim believes and what her fear was and what her  
25 state of mind was at the time that she not only

1 disclosed, but how it was that that fear escalated and  
2 how that fear came to be.

3 People versus Sehn, a case I provided to the  
4 court as well, very similar to the situation we have  
5 here, your Honor, where the defendant and the victim --  
6 defendant was a caregiver of the victim and an element  
7 the People had to prove beyond a reasonable doubt was  
8 forcible compulsion. The court says, this is a  
9 Third Department case from 2002, "In this case it is  
10 undisputed that the defendant was substantially older  
11 and larger than the victims and they looked up to him  
12 as an authority figure and a caregiver."

13 And it was because of that intimate  
14 relationship that the court held that the state of mind  
15 produced in the victim to establish the elements of  
16 force was even more so relevant because of the nature  
17 of the relationship between the parties.

18 THE COURT: Ms. Johnson, let me ask you, what  
19 instance in Queens that you can make a good-faith  
20 argument for with respect to an allegation of force are  
21 you looking to put forward?

22 MS. JOHNSON: The defendant threatens to cut  
23 her fingers off if she tells and while he's abusing  
24 her.

25 THE COURT: All right, my law secretary has

1                   given me the grand jury minutes.

2                   MS. JOHNSON: Which, the Queens or Nassau?

3                   THE COURT: October -- Nassau, it appears.

4                   MS. JOHNSON: Okay.

5                   THE COURT: And it's on Page 24 of October  
6                   15th, 2008.

7                   MS. JOHNSON: Your Honor, I'm going to just  
8                   ask the Court -- I have the Rosario being copied so I  
9                   don't have the minutes with me.

10                  THE COURT: From looking at it here it  
11                  appears as though there's questions being asked of her  
12                  of times that she was threatened in Nassau County and  
13                  in that, in one of her responses, she talks about  
14                  having her -- that he was going to cut her finger off.

15                  Now, that's Nassau County.

16                  MS. JOHNSON: Yes.

17                  THE COURT: So you're saying there's  
18                  something in Queens?

19                  MS. JOHNSON: Yes, Judge, he had threatened  
20                  her in Queens as well. I do not have the grand jury  
21                  minutes from Queens County for your Honor, they're  
22                  being copied, but the force began in Queens, him  
23                  threatening to cut her fingers off, threatening to bury  
24                  her and tell her where she was going to be buried, that  
25                  all happens in Queens as an ongoing pattern of sexual

1 abuse.

2 There are instances charged in this  
3 indictment --

4 THE COURT: Let me ask you this.

5 How -- in terms of recency, how soon or how  
6 close in time, should I say, is the incident that  
7 you're looking to elicit in Queens to the incidents in  
8 Nassau County?

9 MS. JOHNSON: You know what, I would have to  
10 take a look -- are you talking about the specific  
11 instance where he threatens to cut her fingers off?

12 THE COURT: I'm talking about whatever  
13 incident of force that you alleged has occurred in  
14 Queens County that you're looking to elicit as part of  
15 your Molineaux application.

16 MS. JOHNSON: Well, there is force in the  
17 expressed threat, your Honor, and there's force in the  
18 coercive aspect.

19 The force in the coercive aspect is the times  
20 where he tells her, "Do not tell anybody. Let's keep  
21 this a secret," and he tells her to shh (ph), in those  
22 exact words, and what that's what her testimony in  
23 Queens is.

24 The incidents of actual force, physical force  
25 with the threat of cutting her finger, occurs, I

1 believe, a year before. It's at least while she's in  
2 high school and it occurs, I believe, in their kitchen  
3 in their home in Queens.

4 But what --

5 THE COURT: A year before the incident in  
6 Nassau County?

7 MS. JOHNSON: I would have to take a look at  
8 the grand jury minutes, your Honor. I'm sorry, I don't  
9 have them, I have them being copied, the Queens County  
10 grand jury minutes, because I specifically --

11 THE COURT: I mean -- off the record.

12 (Discussion held off the record.)

13 THE COURT: Back on the record.

14 MS. JOHNSON: But with regards to the force,  
15 it's not just -- and when you read the charge of force  
16 it's not just the expressed threat it's also the  
17 implied threat and an implied threat is not something  
18 that just happens on a one-time event.

19 An implied threat is the progression of him  
20 telling her, "Do not tell anybody. Do not tell your  
21 mother. Do not tell anybody what's going on."

22 In fact, the defendant admits it himself on  
23 the video that he told her not to tell anybody and he  
24 says he did it in private so nobody would see.

25 I think it's even more relevant in this case,

1                   Judge, because none of the crimes charged in the  
2                   indictment of statutory, none of them have to do with  
3                   age.

4                   Every single crime, every single charge in  
5                   the indictment requires us to prove that element of  
6                   forcible compulsion.

7                   It would hamper the People and it would  
8                   hamper the prosecution and misguide the jury to believe  
9                   that the force just occurred in Nassau on these  
10                  particular dates. They need to be made to understand  
11                  that this force, both expressed and implied that was in  
12                  her mind in Nassau, occurred during particular  
13                  instances of abuse in Queens.

14                  THE COURT: Well, in the counts of the  
15                  indictment in this case is it a question of express  
16                  force that you've alleged?

17                  MS. JOHNSON: In certain instances there was  
18                  express force with the weapon. In other instances it  
19                  was the implied force, which is why she testifies in  
20                  the grand jury that he had threatened her before and  
21                  that fear continued during the abuse in Nassau County.

22                  It is not during each instance and the way  
23                  the indictment is charged, there's particular dates and  
24                  there's time frames.

25                  More importantly, during those time frames we

1                   are not alleging that on each date he threatened her  
2                   with a knife.

3                   What we are alleging and what we have pled is  
4                   that during those time frames where she admits that  
5                   there wasn't always a knife and he didn't always  
6                   threaten her with a knife, it was her mind and her fear  
7                   that had begun in Queens that was the force that she  
8                   felt and the threat that she felt in Nassau during the  
9                   periods of the abuse.

10                  THE COURT: And your example of implied force  
11                  that occurred in Queens was allegations that he told  
12                  her don't tell anybody?

13                  MS. JOHNSON: Even more than that, when he  
14                  threatens to cut her --

15                  THE COURT: That's express, I would say,  
16                  threat of force, would you agree?

17                  MS. JOHNSON: I would agree with that, Judge.

18                  But as to the implied, I believe that it's  
19                  implied in the nature of their relationship. When a  
20                  father tells his daughter during a course of abuse,  
21                  course of sexual abuse, not to tell anybody and that  
22                  he's going to either bury her or show her where he's  
23                  (sic) buried or this is their secret, that is certainly  
24                  implied force, based on not only what he says and  
25                  implies to her, but based on their relationship.

1                   Even the fact that he tells her that she is  
2                   going to be the one and he wants to take the  
3                   relationship further, that, I would submit to the  
4                   Court, is also implied force and implied coercion  
5                   because it is an authority figure in a position of  
6                   power that's saying this to her.

7                   THE COURT: All right, anything else you want  
8                   to tell me?

9                   MS. JOHNSON: There was two other cases I  
10                  handed to the Court, People versus Chaffee and  
11                  People versus Cooke.

12                  Your Honor, in anticipation of what the  
13                  defense is going to be, I would venture to guess it's  
14                  going to be one of two things; it either didn't happen  
15                  and, if it did, it was consensual. I can't, in my  
16                  mind, think of another avenue that they would go, but  
17                  I'm obviously not -- that's my best guess.

18                  People versus Chaffee and People versus  
19                  Cooke, the court held that prior convictions for  
20                  sexually abusing the same very victim, admissibility of  
21                  that, outweighed any prejudice, particularly when the  
22                  defense was that it never occurred or the allegation is  
23                  a lie.

24                  Here, where we anticipate that one of those  
25                  two things is going to be the defense, certainly it

1           would be admissible.

2                 Your Honor, we seek to admit this evidence on  
3           our direct case both through her testimony and through  
4           the video, through the defendant's own statements on  
5           the video.

6                 I don't know if the Court wants to address  
7           the issue of the video now because we haven't heard  
8           your Honor's decision on the hearing, but one factor  
9           that the Court, I believe, needs to consider is that  
10          assuming your Honor allows the video to come into  
11          evidence, we would argue to your Honor that the  
12          entirety of the video would be admissible to show his  
13          motive, to show his intent, not just from her mouth,  
14          but it's certainly relevant and probative out of his  
15          own mouth.

16                 And one of the things that -- one of the  
17          burdens that the People have is to prove the  
18          voluntariness of a confession to the jury, to the fact  
19          finder, beyond a reasonable doubt.

20                 The entirety of that video, we submit to the  
21          Court, shows the voluntariness of his statement. It  
22          would certainly hamper the People, and I believe it  
23          would be patently unfair, for the Court to allow part  
24          of a video to come in whereas the totality of the video  
25          is what the jury must look at to determine the

1                   voluntariness of his statements. They can see him with  
2                   his own eyes (sic) and determine for themselves that he  
3                   wasn't coerced, an issue that the jury has to consider  
4                   on their own.

5                   So --

6                   THE COURT: For all those reasons.

7                   MS. JOHNSON: -- in sum, Judge, we would  
8                   submit that both the victim's testimony and the video  
9                   are admissible under Molineaux to show not only his  
10                  motive, his intent, but it's absolutely necessary  
11                  background material, it is imperative to the issue of  
12                  force that we have to prove beyond a reasonable doubt  
13                  and this jury must be made to understand that these  
14                  actions did not occur in a vacuum, there was a grooming  
15                  process going on here, there was additional abuse that  
16                  caused her the fear and it goes directly to her  
17                  credibility because it goes directly to why she  
18                  outcried, who she outcried to and what her state of  
19                  mind was.

20                   THE COURT: Mr. Schechter?

21                   THE ATTORNEY: May it please the Court, your  
22                  Honor, I think that counsel has, in fact, put the cart  
23                  before the horse simply because all of her Molineaux  
24                  application relates to what the cases have showed from  
25                  the last hundred years or 80 years since Molineaux has

1                   been decided and that is prior uncharged crimes.

2                   My client is currently being charged in  
3                   Queens County with not only forcible crimes, but  
4                   statutory crimes against the same victim.

5                   As such, your Honor, the cases hold -- and I  
6                   cited Bennett and Betts in my motion in limine. The  
7                   cases hold that you cannot place an accused person in  
8                   the position of having to make a Hobson's choice.

9                   In the event this material comes into  
10                  evidence, he's in the impossible position of having to  
11                  decide, "If I testify to defend myself of what I'm  
12                  being accused of her, including the things I'm being  
13                  accused of in Queens, then I'm going to be  
14                  incriminating myself in Queens County."

15                  "However, if I do not testify, then the  
16                  allegations of the complainant regarding what happened  
17                  in Queens County go unchallenged and go unexplained,"  
18                  and therefore I am hamstrung and he is hamstrung  
19                  because he can't -- there's no way to make a decision  
20                  here. It's between whether you're going to get eaten  
21                  by a tiger eaten by a lion and the law protects him  
22                  from that. That's why Molineaux is restricted to prior  
23                  uncharged crimes.

24                  So everything counsel said, and I'm going to  
25                  get to the applicability of Molineaux in a second, is

1 completely in opposite because the defendant's right to  
2 be protected against self-incrimination outweighs the  
3 desire of the People to basically show propensity  
4 evidence.

5 What they're trying to do, they make all  
6 these nice pronouncements; a limiting instruction could  
7 be made from the Court to the jury.

8 Your Honor, and I have been around a long  
9 time, you cannot get a jury to ignore, "I've been  
10 abused for four years. I've been -- he's taken his  
11 mouth on me and by force. He threatened me with this  
12 in Queens. He did this in the house in front of the  
13 kids. He did this -- " how are you going to ask a jury  
14 to disregard the nitty-gritty of those statements, only  
15 to be utilized to determine his intent here?

16 My client made a confession and on the  
17 confession - which we haven't gotten a determination  
18 yet, but assuming, arguendo, that the Court grants the  
19 People the right that that confession is admissible -  
20 my client made statements on that tape concerning these  
21 instances and Queens, they overlap, although he did on  
22 one instance say, "400 Community Drive we did this,"  
23 and so on and so forth, denied the force.

24 However, the People have represented that the  
25 complainant is going to testify that in Nassau County

1 force was utilized. They went out of their way to get  
2 this knife, supposedly that was in the car. They  
3 allege that he said, "I'm going to bury you here,"  
4 whatever, that these threats were made, they were in  
5 her head.

6 The fact is, he is being charged in  
7 Queens County with violent and statutory crimes.

8 How can I, as his lawyer, put him on the  
9 witness stand and incriminate him in a case for which  
10 he stands to get 25 years consecutively with this?

11 How is he going to defend himself?

12 THE COURT: Let me ask you this.

13 Who says or why do you pose it as though he  
14 has to defend himself from those Queens charges in this  
15 case?

16 MR. SCHECHTER: Because if the People --

17 THE COURT: That's a decision that you and  
18 him --

19 MR. SCHECHTER: No, your Honor, with all due  
20 respect --

21 THE COURT: No, it's a decision,  
22 Mr. Schechter, that you and him will have to make.

23 Obviously, if I allow the People to introduce  
24 this evidence in their direct case and should your  
25 client testify, I'm certainly not going to allow the

1           People to cross-examine your client with regard to the  
2           Queens incidents unless he makes a choice that he's  
3           going to refute those charges here. This jury is not  
4           going to be considering whether he's guilty or not  
5           guilty of the Queens charges.

6                            MR SCHECHTER: With all due respect, your  
7                            Honor, it renders the proscriptions of Bennett and  
8                            Betts moot.

9                            THE COURT: Well, let's get to that because  
10                          I'm glad you bring that up.

11                         If you take a look, Mr. Schechter, and I have  
12                         looked at these cases, one thing that you'll notice  
13                         that with respect to the decisions both in Bennett and  
14                         Betts, in the context of how the Court of Appeals ruled  
15                         in those cases, it deals with the proscription of  
16                         cross-examining a defendant regarding pending charges  
17                         for credibility purposes only.

18                         In other words, it comes up in the context of  
19                         a Sandoval ruling, would you agree?

20                         MR SCHECHTER: Yes.

21                         THE COURT: As opposed to a Molineaux ruling.

22                         MR SCHECHTER: They touch on that, but please  
23                         proceed, your Honor.

24                         THE COURT: Now, if you see in the case that  
25                         came out just this week, and I gave it to both counsel

1           a day or two ago, People versus Leeson, it's clear that  
2           in these types of cases - and when I say these types of  
3           cases, cases involving allegations of sexual  
4           misconduct - particularly as here where it relates to  
5           the same complainant and the same defendant, the  
6           Court of Appeals has said that so long as the evidence  
7           is not for propensity purposes, that the prior bad acts  
8           will be admissible for purposes that bear -- for  
9           purposes that are material to the issues that a jury is  
10          going to consider.

11           So obviously the Court of Appeals is saying  
12          that even these prior bad acts is admissible on the  
13          People's direct case, so long as it's not for  
14          propensity purposes.

15           My question to you is how, then, do you  
16          reconcile the fact that the Court of Appeals is saying  
17          this type of evidence is admissible with the Betts and  
18          the Bennett cases?

19           Because in the Betts and Bennett cases it  
20          talks about, unless I'm misreading the cases, where a  
21          DA is looking to cross-examine the defendant regarding  
22          pending criminal charges for credibility purposes as  
23          opposed to Molineaux issues.

24           So, while the Betts and Bennett cases are  
25          instructive with regard to some of the things that you

1 bring up, there is, in my view, a rather significant  
2 distinction in the way those cases are decided as  
3 opposed to what we're dealing with here.

4 MR SCHECHTER: I respectfully take --  
5 disagree with the Court in this sense.

6 The court dealt with the uncharged crimes in  
7 those two cases with respect to cross-examination of a  
8 defendant on the witness stand in order to prevent him,  
9 basically, from incriminating himself.

10 The same issue goes -- relates in this case  
11 under a Molineaux theory because it would take all of  
12 the steam and protections out of that ruling to permit  
13 the District Attorney to go backdoor here and offer on  
14 her direct case evidence of those crimes.

15 We would be, then, in a position to have to  
16 defend those crimes here as well as Queens County, your  
17 Honor, because the jury, and with all due respect, no  
18 matter what limiting instruction the Court gives, no  
19 matter what the Court says, this jury is going to then  
20 be shown by the District Attorney, through the  
21 testimony of the complaining witness and through this  
22 admission, that the complaining witness has been -- my  
23 client is being charged, rather, with crimes in  
24 Queens County for which he's indicted, crimes for which  
25 he is not charged here and I respectfully submit it's a

1           68 count indictment in Queens County, there's no other  
2           reasonable view of this evidence other than the  
3           People's desire to show propensity here.

4                 The defendant would then have to take the  
5           witness stand or elect not to take the witness stand  
6           because he then has to face B felonies in  
7           Queens County, he takes the witness stand regardless of  
8           any desire to -- or limitation of the Court's --  
9           limiting the People to cross-examining my client, the  
10          other material comes in. It's going to come in  
11          regardless.

12                 So whether he takes the stand here or doesn't  
13          take the stand here, he either incriminates himself in  
14          Queens County or he's going to incriminate himself in  
15          this case and it just makes no sense, Judge.

16                 THE COURT: Your concern, and that's what the  
17          concern of the Court of Appeals was in the Betts and  
18          Bennett cases, is a defendant waiving his  
19          self-incrimination rights regarding a pending criminal  
20          charge and, again, and it bears repeating, that in that  
21          particular case the People were looking to  
22          cross-examine the defendant regarding pending charges  
23          in another county for credibility purposes.

24                 I can assure you, and that's what your  
25          concern is, that your client, by testifying here in

1                   this case, is going to be giving up or foregoing his  
2                   Fifth Amendment right to not testify with regard to the  
3                   Queens charges, but I say to you that the only way that  
4                   that would happen would be if he decided to testify in  
5                   this case regarding the criminal charges or the acts  
6                   that are pending in Queens because certainly I'm not  
7                   going to allow the People to cross-examine him about  
8                   those Queens instances, should he take the stand here,  
9                   unless, again, unless he brings -- he opens the door,  
10                  if you will, as we all know, to that.

11                  MR SCHECHTER: Your Honor, hypothetically --

12                  THE COURT: And I think that protects your  
13                  client's Fifth Amendment rights with regard to the  
14                  Queens case and it preserves his right to refute, if  
15                  you will, the charges that this jury is going to  
16                  consider here.

17                  MR SCHECHTER: With all due respect, it does  
18                  not, your Honor, because.

19                  THE COURT: How does it not?

20                  MR SCHECHTER: Because if he's not going to  
21                  be cross-examined, if he's not going to be examined  
22                  about the cases in Queens County, then the jury is  
23                  going to hear the complainant's testimony  
24                  uncontradicted, he will be then -- they will assume he  
25                  will have to, if he's on the witness stand, refute

1           those charges, because if he doesn't refute the charges  
2           they're going to absolutely draw an inference that he  
3           must be guilty of those charges and we're going to be  
4           in the same position.

5                 It's a backdoor desire by the prosecution to  
6           get un -- inadmissible, rather, evidence before this  
7           jury which is in the nature of proclivity evidence,  
8           that he is predisposed to commit this crime.

9                 THE COURT: That's a different argument in  
10           itself. That's an argument against a Molineaux  
11           application.

12                 MR SCHECHTER: But what I'm saying is,  
13           they're related.

14                 Utilizing this vehicle to get this evidence  
15           before this jury is a backdoor way of violating Betts  
16           and Bennett. That's what they're trying to do.

17                 The fact that Betts and Bennett spoke of  
18           cross-examination of a defendant taking the witness  
19           stand does not, in any way, limit the prejudice to my  
20           client in the event this material comes in because then  
21           he's faced with this -- still going to be faced with  
22           this obstacle and he has to make a decision, "Do I get  
23           on that witness stand and risk incriminating myself in  
24           Queens or do I keep quiet and risk that the jury hears  
25           this material and it's unrefuted?"

1                   That is not a choice, I respectfully submit,  
2                   that the Court of Appeals says a defendant should make.

3                   I would also like to quote from some of the  
4                   cases that counsel has, in fact, cited.

5                   And the Molineaux issue, obviously, overlaps  
6                   to some degree, Judge.

7                   Firstly, your Honor, she cites - when I say  
8                   she I mean Ms. Johnson - People v. Alvino. It's the  
9                   first case that she cites here.

10                  Now, on Page 17 in the dissent, which also  
11                  reiterates some of the theory that the majority  
12                  utilized, the dissent says, that's Page 17, the second  
13                  paragraph on the left two-thirds down the page, "The  
14                  suggestion that evidence could not be received to show  
15                  that the same man picked the pocket of the same person  
16                  on several successive occasions here together does not  
17                  apply to this case," meaning this particular case, "but  
18                  implicit is the fact that the court does not permit  
19                  this kind of inquiry," and they justify it by saying  
20                  the pickpocket knows when he steals, there could be no  
21                  mistake about it, whereas here there could have been a  
22                  mistake. There's no allegation of a mistake.

23                  How is it going to be a mistake?

24                  Is there a mistake whether you sexually  
25                  abused another person?

1                   No, either you did or didn't, period.

2                   Now, that's one.

3                   She also cites People versus Marji.

4                   There is nothing here with respect to the  
5                   relationship. The relationship is conceded. They know  
6                   about the relationship. She says she wants to show a  
7                   relationship between the two of them. That's already  
8                   conceded. He concedes it in his statement and she's  
9                   going to testify to that.

10                  The only real difference is was forced used,  
11                  assuming that statement comes in, and I'm going to ask,  
12                  again, that be limited as part of my application.

13                  She also cites People v. Jackson as she  
14                  indicated before.

15                  Jackson again says in a rape prosecution  
16                  evidence of a prior uncharged sexual assault,  
17                  uncharged, Judge.

18                  And the court says in that case, "The  
19                  uncharged rape in itself was inadmissible under  
20                  People v. Molineaux, but I conclude that the trial  
21                  court had discretion to admit evidence of the rape to  
22                  give meaning to the statement."

23                  The statement was made, basically, in the  
24                  course of the current rape. When he was raping her he  
25                  says, "Well, I did this, this and the other thing."

1                   Yeah, that's a res gestae statement. That's  
2 completely different.

3                   So the statements -- the cases that counsel  
4 is citing in support of her Molineaux application are  
5 in apposite, Judge.

6                   Here the most important right is my client's  
7 right against self-incrimination.

8                   They have a witness that's going to testify  
9 as to the specifics of the sexual abuse. The Court has  
10 already been given a brief photocopy from counsel's  
11 statements of how she intends to prove the force  
12 occurred.

13                  There is no reason whatsoever, short of  
14 trying to show propensity, for counsel to be able to  
15 elicit information concerning charged -- a charged  
16 indictment in Queens County, even with the same  
17 complainant.

18                  I believe that the courts over this century  
19 have purposefully stayed away from that red elephant in  
20 the room and that is charged crimes because they were  
21 jealously (sic) trying to protect defendant's right  
22 against self-incrimination.

23                  And to permit the People to go into these  
24 charged crimes in Queens puts him in the situation  
25 where he's unable to defend himself.

1                   I respectfully submit it violates due  
2 process, it violates equal protection, it violates the  
3 law.

4                   THE COURT: Let me propose this to you,  
5 Mr. Schechter.

6                   What if I am of the opinion that the words  
7 charged or the fact that your client is facing charges  
8 in Queens is not brought out in front of this jury, but  
9 rather the underlying acts for which form the basis of  
10 the charges because, quite frankly, I'm not going to  
11 allow the People in this case to talk about a pending  
12 Queens indictment with regard to your client --

13                  MR SCHECHTER: It's not only --

14                  THE COURT: -- does that mollify your  
15 concern?

16                  MR SCHECHTER: No, because it's not only that  
17 the jury will hear that he's charged in another body, a  
18 grand jury indicted him, whoops, for a crime. That's  
19 not the real prejudice here.

20                  The prejudice here is due process; that  
21 these, are, in fact, in fact, charges he's facing in  
22 Queens County and the decision -- the determination  
23 will have to be made by him to either incriminate  
24 himself in Queens County or to try to ameliorate the  
25 prejudice that the People have caused by these alleged

1 prior acts being introduced.

2 That prejudice, that issue, will never go  
3 away, Judge.

4 THE COURT: I'm listening to you.

5 MR SCHECHTER: Additionally, your Honor, with  
6 respect to the statement, the statement itself contains  
7 overlaps, contains sexual acts that were alleged to  
8 have occurred in Queens.

9 So the statement itself would also have to be  
10 redacted to some degree so that prejudice doesn't  
11 eventuate to here.

12 The People knew when they charged my client  
13 in Nassau County -- they knew he had been indicted  
14 in Queens. They knew that he was charged in Queens  
15 because some of the same because some of the same acts  
16 he's charged with here. They knew that.

17 As such, they elected to bring this  
18 prosecution. They cannot be permitted a benefit from  
19 trying to get two shots at him for the same acts,  
20 Judge, and that's what they're trying to do.

21 THE COURT: All right, it would appear to  
22 this Court that the -- and, again, as recently as this  
23 week the Court of Appeals has indicated that in these  
24 types of cases, specifically when it deals with courses  
25 of conduct or periods of time when there's allegations

1           of sexual misconduct between the same complainant and  
2           the same defendant and as recently as in the Leeson  
3           case that came out this week similar to the situation  
4           here in this case, the Court of Appeals there  
5           essentially said that prior bad acts, if you will, in  
6           an adjoining county, not the county for which the  
7           defendant was on trial for, were admissible in that  
8           particular case since it had a bearing on the nature of  
9           the -- and background, if you will, the relationship  
10          between the complainant and the defendant and placed,  
11          and I'm quoting from the Leeson case, "placed the  
12          charged conduct in context."

13           Obviously, these decisions are decisions of  
14          discretion as far as the trial court is concerned.

15           MR SCHECHTER: May I please interrupt the  
16          Court for a second?

17           THE COURT: Yes.

18           MR SCHECHTER: I think the determination is  
19          one of law with respect to Molineaux. I think the  
20          courts held that it's a question of law and not fact or  
21          discretion.

22           The other thing is, because I don't think I  
23          fully addressed ed the Molineaux issue and I would like  
24          to do that so the record is complete, I do not believe  
25          based on the proffers of Ms. Johnson that she has

1 demonstrated sufficient, under Molineaux, to offer on  
2 direct examination or through other -- direct testimony  
3 or through any other evidence, including videotape,  
4 that the prejudice that will be -- that will result  
5 from the introduction of this material would outweigh  
6 its probative value.

7 I further don't think that she came in under  
8 any of the exceptions listed under Molineaux, mistake,  
9 intent -- there's no mistake.

10 Intent is a question of fact for the jury  
11 that the complainant will testify to and that's  
12 something that will be resolved by them after they hear  
13 the evidence.

14 Mistake, identity, is not an issue and common  
15 plan and scheme is not an issue because this is not a  
16 larceny crime or some kind of guesswork puzzle.

17 There's only one real issue, did he forcefully  
18 have sex with her, that's the issue.

19 As such, it's not rocket science and the only  
20 purpose for her doing this is for propensity purposes,  
21 Judge.

22 So she has failed, I respectfully submit, to  
23 come in with any exceptions to Molineaux.

24 Additionally, the prejudice will outweigh its  
25 probative value and for those reasons, in addition, I

1 respectfully ask the Court deny the application, both  
2 because of my client's violation of his right against  
3 self-incrimination, due process, and because Molineaux  
4 has not fully been complied with.

5 THE COURT: As I was saying, the Court of  
6 Appeals, on this particular issue, has directed trial  
7 courts, in its discretion, to balance the probative  
8 value of these uncharged or charged acts as to whether  
9 or not their probative value outweighs any prejudicial  
10 effect.

11 And, as you indicated, Mr. Schechter, there  
12 are certain enumerated areas for which the court has  
13 indicated that these items of uncharged prior acts or  
14 criminal acts, bad acts, if you will, may be relevant  
15 in a particular prosecution.

16 And, as I was indicating to you a moment ago,  
17 in this particular type of setting what the -- not only  
18 the Court of Appeals, but certainly many cases out of  
19 the Second Department involving either sexual  
20 allegation -- allegations of sexual conduct between the  
21 same defendant -- between the same complainant and  
22 defendant and it's certainly been seen in domestic  
23 violence cases as well, that in terms of the  
24 admissibility of these particular prior uncharged  
25 criminal acts, one of the areas that the courts,

1                   including the Leeson Court of Appeals case, indicated  
2                   is that such evidence can be relevant to provide  
3                   necessary background information on the nature of the  
4                   relationship and I think for that reason, perhaps more  
5                   than any other, I think some of the incidents in Queens  
6                   are relevant.

7                   I would agree that they're not relevant for  
8                   purposes or for absence of mistake, I would agree with  
9                   you with respect to that, but I certainly think they  
10                  are relevant with respect to explaining the nature of  
11                  the relationship between the defendant and the  
12                  complainant, the background of the relationship.

13                  It certainly appears, as well, to have some  
14                  bearing on intent, particularly as it deals with the  
15                  issue of the element of force that's charged in this  
16                  particular case.

17                  Insofar as your argument that your client's  
18                  Fifth Amendment or self-incrimination rights would be  
19                  compromised, as I indicated to you during the course of  
20                  our discussion, that only becomes an issue if -- should  
21                  he take the stand and discuss and, if you will, open  
22                  the door to those Queens acts.

23                  It's certainly my intention not to allow the  
24                  DA to cross-examine, for example, for credibility  
25                  purposes, on the pending criminal acts, certainly that

1           would be precluded by the Betts and Bennett cases that  
2       you've given.

3           But, again, the Betts and Bennett cases deal  
4       with an issue that was posed in terms of a Sandoval  
5       application and, again, as I indicated, the Court of  
6       Appeals has quite clearly said that this type of  
7       evidence in these circumstances, provided that if it's  
8       not unduly prejudicial, can be admissible and is  
9       relevant and for that reason, for those reasons, I  
10      should say, I'm going to grant the People's application  
11      to this extent.

12           First and foremost, I'm going to direct the  
13      People not to elicit anything from any of the -- from  
14      the complainant or, for that matter, any of their  
15      witnesses regarding any pending Queens charges or the  
16      reference to a Queens indictment, number one.

17           Number two, I am going to allow them to  
18      elicit from the complainant when this -- the nature of  
19      this, if you will, sexual relationship began with the  
20      defendant.

21           I am going to elicit -- allow the People to  
22      elicit when the, in terms of an instance, if you will,  
23      when the complain -- when the relationship went from  
24      what appeared to sound as though -- with the absence of  
25      force to the use of force by the defendant.

1                   And I will allow the People to elicit  
2                   testimony with respect to the alleged statement by the  
3                   defendant that he wanted to be the one, and I'm  
4                   assuming that this is what the testimony will be, that  
5                   there was some indication by the defendant that he  
6                   wanted -- or he picked, chose, if you will, a certain  
7                   date that he was to have sexual intercourse with the  
8                   complainant.

9                   I see no reason to make any redactions from  
10                  the defendant's written statements -- well, let me take  
11                  that back.

12                  I haven't made a ruling with respect to both  
13                  the written and the videotaped statement. Should I  
14                  allow those items to be introduced by the People, I  
15                  would not -- I would not redact any portions of either  
16                  the written or the videotaped statement. I think that  
17                  insofar as particularly the videotaped statement is  
18                  concerned, I think that my ruling with respect to what  
19                  the People will be allowed to elicit is consistent with  
20                  what the defendant is alleged to say on the -- on that  
21                  videotaped statement.

22                  And I think that, quite frankly, in those  
23                  limited circumstances I think that this evidence would  
24                  be admissible. I don't think that its probative value  
25                  is outweighed by any prejudice.

1 MS. JOHNSON: May I ask the Court a question?

2 THE COURT: Yes.

3 MS. JOHNSON: With regards to the Court's  
4 ruling about admitting -- allowing, the People to elicit  
5 testimony regarding when the sexual relationship began,  
6 is the Court allowing the People to elicit testimony  
7 regarding the time or is it the circumstance?

8 THE COURT: I would indicate the time and  
9 circumstance and, as I indicated, when the relationship  
10 changed from an unforced, if you will, relationship to  
11 one of force.

12 MS. JOHNSON: And that also includes the time  
13 and the circumstance?

14 THE COURT: Time and circumstance, a  
15 circumstance.

16 MS. JOHNSON: The particular circumstance.

17 THE COURT: Yes.

18 MS. JOHNSON: And with regards to when the  
19 defendant indicates he wants to be the one, is the  
20 Court saying the victim would be able to testify that  
21 it occurred during a period of sexual abuse, without  
22 specific instance of it, but during sexual abuse that  
23 that statement was uttered?

24 THE COURT: Yes. And I think that critically  
25 in this case, most of these allegations are obviously

1 intertwined with each other, both what occurred in  
2 Queens and Nassau, and obviously the instances that I  
3 am allowing all, if you will, lead up to the instances  
4 in Queens -- instances in Nassau, I should say, right  
5 up until the time the defendant is arrested.

6 So that's my ruling with respect to the  
7 Molineaux application.

8 People, have you -- I assume, Mr. Schechter,  
9 you're excepting to my ruling.

10 MR SCHECHTER: I do except to each and every  
11 aspect of your Honor's ruling and I don't believe your  
12 Honor addressed the due process argument I made  
13 concerning -- that the District Attorney is not  
14 permitted to go into charged acts by virtue of  
15 violating my client's due process and violation against  
16 self-incrimination.

17 THE COURT: I thought I had, but if I didn't,  
18 just so both of you are clear, the People are not  
19 permitted to cross-examine the defendant with regard to  
20 the pending Queens charges, should he testify, unless  
21 he opens the door to that and I will assiduously  
22 protect, Mr. Schechter, your client's Fifth Amendment  
23 rights with regard to that Queens matter, but bear in  
24 mind I can only do so to the extent that your client  
25 himself does not open the door, if you will, and

1           testify to these Queens matters.

2                            MR SCHECHTER: Your Honor, the Queens matters  
3           would already have been coming into evidence so he  
4           would have no choice but to testify to the Queens  
5           matters because the People are going to be bringing  
6           them in and that's the very nature of my argument  
7           against self-incrimination and due process.

8                           So if he testifies and will be opening the  
9           door if he goes into what's already been offered, it's  
10           academic.

11                         THE COURT: His Fifth Amendment rights are  
12           protected insofar as the Queens case is concerned,  
13           provided that he doesn't himself, as a witness -- he  
14           can't, to be -- I don't want to be simplistic about it,  
15           but it is somewhat of a two-way street; if he doesn't  
16           open the door to that obviously his Fifth Amendment  
17           rights are protected.

18                         This jury is not going to be considering  
19           those Queens matters, they're not going to be hearing  
20           about a Queens indictment or Queens charges, so this  
21           jury, obviously, is not concerned about the matters in  
22           Queens and certainly if he doesn't testify to the  
23           matters in Queens then his Fifth Amendment rights with  
24           respect to those charges are protected.

25                         MR SCHECHTER: May I ask a hypothetical

1 question to the Court?

2 Let's say the complainant gets on the witness  
3 stand and testifies contrary to the way she testified  
4 in Queens County. Of necessity and in order to  
5 authenticate the inconsistency I would have to refer to  
6 the grand jury minutes in Queens County.

7 As such, how now am I going to do that  
8 without letting the cat out of the bag, basically  
9 prejudicing my client because in order to defend him I  
10 have to go into the Queens matters?

11 THE COURT: Well, one might say to the  
12 complainant, "Do you remember testifying at a prior  
13 proceeding on this particular day? And did you -- were  
14 you asked this question and did you give this answer?"

15 MR SCHECHTER: Let's proceed.

16 "I don't recall. What proceeding? I don't  
17 recall that. Oh, and that was when it was in Queens?

18 I mean, that's the problem with these kinds  
19 of things, Judge. That's my concern. It can come out  
20 even indirectly from the complaining witness.

21 THE COURT: The only thing I can tell you,  
22 Mr. Schechter, and, believe me, I can appreciate your  
23 position, I will do my best to preserve your client's  
24 Fifth Amendment rights to the extent that I can and,  
25 again, as I said, it would appear that based upon the

1 case law that's in its current state, that this  
2 evidence is admissible and I will do my best to make  
3 sure that your client's right, not only in this trial  
4 but with respect to any future rights he may have in  
5 Queens are protected.

6 MS. JOHNSON: And, your Honor, I've never  
7 tried a full case before the Court, but I will give the  
8 Court my representation that during preparation of  
9 testimony with the victim and with any other witnesses  
10 that testified in the grand jury I will make it very  
11 clear to them that in no uncertain terms are they to  
12 mention any of this information and to be very  
13 conscious of the fact that if testimony comes up about  
14 what they testified to in Queens, that they are not to  
15 make reference to it at the peril of their own trial,  
16 your Honor, and this is important to everybody,  
17 including the victim, and she is a smart intelligent  
18 girl, your Honor. I truly believe that my cautionary  
19 warnings to her and to the other victims (sic) will be  
20 certainly honored before the jury -- witnesses.

21 THE COURT: I would hope that that's the case  
22 but certainly there's been many, many, many an instance  
23 where, notwithstanding the best of intentions, things  
24 sometimes happen.

25 MS. JOHNSON: Absolutely.

1                   MR SCHECHTER: Please let the record reflect  
2                   that I have an exception to the -- to your Honor's  
3                   entire ruling.

4                   THE COURT: People, it would be -- I would  
5                   love to hear that this logbook has managed to make its  
6                   way to your office. I've asked my law secretary to  
7                   call your office.

8                   MS. JOHNSON: Okay.

9                   Can I make a call?

10                  THE COURT: Yes.

11                  MS. JOHNSON: I'm assuming she was  
12                  unsuccessful?

13                  THE COURT: I haven't heard from her.

14                  (Brief recess in the proceedings.)

15                  MS. JOHNSON: I would like the record to be  
16                  complete, your Honor.

17                  THE COURT: Yes.

18                  MS. JOHNSON: Can I see that first?

19                  Can I just see it?

20                  MR SCHECHTER: Sure.

21                  (Shown to counsel.)

22                  MR SCHECHTER: Based upon my review of the  
23                  log that we requested from the police, which does  
24                  contain the entries from midnight through the time my  
25                  client is allegedly placed under arrest, there's

1 material -- I don't see any material that would be  
2 useful for cross-examination on the -- of the officers.

3 THE COURT: Anything you want to add to your  
4 argument in light of that, that you haven't made?

5 MR SCHECHTER: No.

6 THE COURT: One -- just before we get to the  
7 decision after hearing, one thing, Mr. Schechter, I  
8 neglected to add.

9 Obviously, with respect to any of this  
10 Molineaux evidence, it would be my intent to give a  
11 curative instruction to the jury, both before, after  
12 and during my closing remarks, during my charge.

13 If there's anything you want me to consider  
14 in terms of that charge, by all means, please give it  
15 to us well enough in advance that I can review it with  
16 my law secretary and obviously I trust you will give a  
17 copy to the DA.

18 MR SCHECHTER: Well, I should like to say  
19 parenthetically, your Honor, in my view there could be  
20 no curative charge that would overcome the immense  
21 prejudice that would result from the jury hearing about  
22 all of these prior instances that have no relation to  
23 this whatsoever, as I indicated before, so I don't  
24 believe there can be any curative instruction that  
25 would overcome that prejudice.

1                   THE COURT: All right.

2                   And I take it by that you're not asking for  
3 one?

4                   MR SCHECHTER: No.

5                   THE COURT: If you change your mind,  
6 obviously, please do so before the complainant should  
7 testify.

8                   MR. SCHECHTER: With that in mind, I call  
9 for all Rosario material concerning the complainant's  
10 testimony in Queens County.

11                  THE COURT: I see Ms. Johnson shaking her  
12 head in the affirmative.

13                  MS. JOHNSON: Yes, Judge, I would have turned  
14 over her grand jury minutes anyway.

15                  Actually, hopefully to expedite things for  
16 Mr. Schechter to have the Rosario by tomorrow, it's  
17 being photocopied as we speak by my parallel.

18                  And any handwritten notes between the  
19 prosecutor in Queens and the victim, I had requested  
20 everything, so I don't believe that there's anything  
21 from the Queens case that he wouldn't have as Rosario  
22 in this matter.

23                  MR SCHECHTER: Additionally, I neglected,  
24 unfortunately, to ask this, did Officer Alfaro testify  
25 in the grand jury, either in Queens County or in

1                   Nassau County?

2                   MS. JOHNSON: She did not in Nassau.

3                   I have already obtained copies of all the  
4                   witnesses' grand jury testimony in Queens, including  
5                   Officer Alfaro. That's being copied as we speak.

6                   MR SCHECHTER: I did not have  
7                   officer Alfaro's grand jury testimony when she  
8                   testified. I will examine it to see if there's any  
9                   material that I find pertinent and if that's the case I  
10                  will seek permission from the Court.

11                  THE COURT: It seems as though the beat goes  
12                  on.

13                  Anything else we need to take up?

14                  MS. JOHNSON: Just scheduling.

15                  THE COURT: We will deal with that later.

16                  Can I have the exhibits from the hearing?

17                  MS. JOHNSON: Sure.

18                  MR SCHECHTER: Mine, too?

19                  THE COURT: Yes.

20                  MS. JOHNSON: Do you want the video?

21                  THE COURT: No.

22                  MS. JOHNSON: Your Honor, can I keep a copy  
23                  of that logbook so I have it for the file and I'll give  
24                  Mr. Schechter a copy this afternoon?

25                  THE COURT: Yes.

(Shown to counsel.)

2 MS. JOHNSON: Your Honor, when we do discuss  
3 scheduling I will have so-ordered subpoenas for your  
4 Honor, if the Court would assist the People for  
5 witnesses for trial?

6 MR SCHECHTER: Would the Court check to see  
7 if it has the photographs?

Because I looked in the file where I normally  
keep them and the photographs I have here, which are  
basically duplicative, I don't see, as well as the  
medical record.

12 MS. JOHNSON: I'll double check my file, but  
13 I know I don't have them.

14 MR SCHECHTER: No, wait, here it is, I have  
15 the medical record.

16 (Pause in the proceedings.)

22 It does bear noting that there was not any  
23 type of Dunaway or probable cause portion of the  
24 hearing.

25 The hearing began on April 30th, continued to

1 May 1st, May 4th, May 5th and concluded today, May 6th.

2                   The People produced two witnesses, a  
3 Detective Shulman from the 105th Squad, if you will,  
4 and a Police Officer Alfaro from the 105th Precinct as  
5 well.

6                   The defendant also, in addition to  
7 introducing a number of exhibits, predominantly  
8 photographs, defendant's medical records, the defendant  
9 himself testified with respect to issues that are  
10 pertinent to the hearing.

11                  The Court credits the People's -- testimony  
12 of the People's witnesses and makes the following  
13 findings of facts and conclusions of law.

14                  On or about June 23rd into June 24th, 2008  
15 Detective Leonard Shulman of the 105th Precinct, a  
16 ten-year police officer and five-year detective, was  
17 working a 4:30 p.m., June 23rd, 2008 to 1 a.m. tour in  
18 the early morning hours of June 24th, 2008.

19                  At some point before his tour was to end  
20 between midnight and 1 a.m. he was assigned to  
21 investigate a sex abuse allegation. He was notified  
22 that a female complainant was physically in the  
23 105th Precinct being interviewed by police officers as  
24 well as a representative, I believe, of the ACS, New  
25 York City ACS or in Nassau County what I would think

1           would be the equivalent of the Child Protective  
2           Services Bureau.

3                 He was -- he interviewed -- or  
4                 Detective Shulman, I should say, had interviewed the  
5                 complainant in an interview room at the 105th Precinct.

6                 At one point at approximately, according to  
7                 the detective, 4:45 a.m. he was advised by  
8                 Sergeant O'Hagan that the defendant had arrived at the  
9                 105th Precinct, that he was there to report his  
10                 daughter was missing.

11                 The defendant, it would appear to this Court,  
12                 was at some point placed in custody prior to  
13                 Detective Shulman seeing him at approximately 5:10 in  
14                 the morning, according to Detective Shulman, in one of  
15                 the interview rooms at the 105th Squad.

16                 Prior to going into that room the detective  
17                 indicated that he had secured his gun in a desk drawer  
18                 where his office was outside of the interview room.

19                 He indicated that he came into the interview  
20                 room. The defendant had already been placed in that  
21                 room by another officer. Detective Shulman indicated  
22                 that he introduced himself to him as a detective with  
23                 the 105th Precinct and he told him that prior to  
24                 speaking to him he would be required to read him what's  
25                 referred to as his Miranda warnings.

1                    Detective Shulman indicated that he had  
2                    obtained a Miranda -- a preprinted Miranda warning form  
3                    from his desk drawer. It's been marked, or a copy of  
4                    the one used, was marked as People's Exhibit Number 1  
5                    in evidence. It's referred to as a PD 244-149A form.

6                    He -- Detective Shulman indicated that he  
7                    began to read aloud the questions that were contained  
8                    in that form which contained the six rights and  
9                    admonitions with regard to a suspect's Miranda  
10                  warnings. He read them aloud.

11                  After each one -- each warning, if you will,  
12                  is followed by a question mark according to the form  
13                  that's in evidence. The detective read these -- each  
14                  of these warnings and rights to the defendant. He  
15                  indicated that the defendant answered yes to each of  
16                  them. He indicated that the defendant spoke and  
17                  understood the English language.

18                  After the defendant answered yes to each of  
19                  the six rights or warnings contained in the form  
20                  Detective Shulman had affixed or wrote the word yes  
21                  after each question. He then gave the form to the  
22                  defendant and -- well, actually, prior to that the  
23                  detective had the defendant sign his name, print his  
24                  name and Detective Shulman had wrote the location and  
25                  date that the Miranda warnings were administered, which

1                   were approximately 5:15 a.m. on June 24, 2008. He gave  
2                   the form to the defendant, according to the detective,  
3                   indicated to him to read the rights and warnings, asked  
4                   if his answers to those questions that had been -- he  
5                   had verbally indicated yes to a few moments earlier  
6                   were still the same, at which point the defendant,  
7                   according to the detective, said yes.

8                   He then asked the defendant then to affix his  
9                   initials after the word yes on the six different --  
10                  after the six different questions that were posed.

11                  The defendant then wrote his initials,  
12                  according to the -- according to Detective Shulman,  
13                  after the words yes six times. As I indicated  
14                  previously, the defendant signed his name and the form  
15                  itself is signed by Detective Shulman with his -- with  
16                  his shield number as well.

17                  Subsequently, subsequent to this,  
18                  Detective Shulman then indicated that he asked the  
19                  defendant to -- if he would be willing to consent to a  
20                  search of his motor vehicle which detective indicated  
21                  was -- had been -- was at the 105th Precinct parked  
22                  outside the 105th Precinct.

23                  According to Detective Shulman defendant  
24                  indicated that he did -- he would consent to that.

25                  Again a preprinted consent search form was

1           then produced by Detective Shulman. Detective Shulman  
2           then indicated he read from the form, which has been  
3           entered into evidence as People's Number 2, and this is  
4           with respect to his home at 242-10 89th Avenue in  
5           Bellerose, Queens County. He read the form to the  
6           defendant. He then gave the defendant the form to  
7           read.

8                         He indicated if the defendant was willing to  
9           consent to that form, to sign in the space provided  
10           which, according to Detective Shulman, the defendant  
11           did affix his signature as the person giving consent.  
12           That form was signed, according to Detective Shulman,  
13           approximately 5:20 a.m. on the morning of June 24th,  
14           2008.

15                         According to Detective Shulman, in addition  
16           to the defendant signing or affixing his signature on  
17           the form, it was the defendant that had placed the time  
18           and date on the form itself.

19                         The next form that was given to the defendant  
20           or was -- there was a conversation between the  
21           detective and the defendant, was a consent form to  
22           search his vehicle. Again, that is the vehicle that  
23           was parked at the side of the 105th Precinct.

24                         The detective went over the consent form,  
25           read the consent form aloud to the defendant.

1                   The defendant indicated to Detective Shulman  
2                   that he, likewise with the house, would be willing to  
3                   consent to the search of his vehicle. This form was  
4                   received in evidence as People's Number 3.

5                   According to Detective Shulman, the defendant  
6                   signed his name on the form, affixed the date and time  
7                   on the form. This form also has the signature of  
8                   Detective Shulman as well as a shield number that's on  
9                   the form and the form identifies the VIN number as well  
10                  as the license plate of the vehicle that the defendant  
11                  had driven to the 105th Precinct that morning.

12                  After the forms were then signed  
13                  Detective Shulman indicated he took a break. He left  
14                  the defendant inside the interview room.

15                  It bears noting that during this time the  
16                  only police personnel that was inside the interview  
17                  room with the defendant was Detective Shulman.

18                  He indicated he went back --  
19                  Detective Shulman indicated he went back and spoke to  
20                  the complainant further, who was in another room within  
21                  the 105th Squad during this time.

22                  At approximately 6:20 a.m. Detective Shulman  
23                  re-entered the room where the defendant was located.  
24                  During this time or throughout this time he indicated  
25                  that the defendant was not handcuffed.

1                         The defendant then -- or the detective,  
2                         actually, asked the defendant if he knew what he was  
3                         under arrest for and the defendant replied to him that  
4                         he had slapped his daughter regarding -- as a result of  
5                         a previous argument that he had had with her at an  
6                         amusement park, I believe the weekend before.

7                         Detective Shulman asked the defendant if he  
8                         would be willing to make a written statement concerning  
9                         what he had just said. Defendant indicated that he  
10                         would.

11                         He gave the defendant a -- what would appear  
12                         to be, although this is a photocopy, and this is  
13                         People's 5 in evidence, a yellow pad, a blank yellow  
14                         pad, in which the defendant wrote out his name, his  
15                         address, the date, which was June 24th, 2008, the time,  
16                         which was approximately 7:30 a.m.

17                         According to Detective Shulman the defendant  
18                         then -- strike that.

19                         Actually, the first -- is there -- this first  
20                         statement was actually People's 4 in evidence. The  
21                         reference to Number 5 is incorrect. The first  
22                         statement that the defendant wrote was People's  
23                         Number 4 in evidence.

24                         Again, he gave this blank piece of paper to  
25                         the defendant. The defendant then wrote out a written

1 statement in his own words, in his own handwriting, as  
2 to what he had just told Detective Shulman.

3 Indeed, according to Detective Shulman,  
4 defendant had corrected the date initially where it  
5 said Saturday 6/21 or 6/22, the defendant changed that  
6 date.

7 That statement was done at 6:25. As I  
8 indicated, it is approximately a one and one-quarter  
9 page statement on a yellow legal pad.

10 The detective testified that he then  
11 confronted the defendant with allegations that his  
12 stepdaughter had claimed that there was a -- there had  
13 been some inappropriate sexual conduct between him and  
14 his stepdaughter.

15 Prior to that, actually, the defendant was  
16 allowed to use the restroom -- was then handcuffed,  
17 taken to a restroom and then returned back to the  
18 interview room.

19 As I indicated, at approximately 7:25 a.m.  
20 the detective went back into the interview room and sat  
21 across from the defendant in the interview room and  
22 that -- indicated to the defendant that the  
23 stepdaughter had made allegations of an inappropriate  
24 nature.

25 Detective Shulman wouldn't indicate to the

1 defendant the details of the allegations that were  
2 being made at that time by the stepdaughter in a  
3 separate room.

4 He then asked if he would like to make a  
5 second statement. According to Detective Shulman the  
6 defendant stated that he felt bad about it and would  
7 like to make a statement.

8 Again the defendant was offered a blank  
9 yellow pad and a piece -- and a pen at which time the  
10 defendant then, in his own handwriting, wrote a second  
11 statement - and, again, this is now People's 5 in  
12 evidence - dated June 24th, 2008, the time is  
13 approximately 7:30 a.m., in which the defendant then  
14 wrote a second statement in response to the allegations  
15 that had been made by the complainant as told to him by  
16 the detective.

17 On both of these statements the defendant's  
18 signature appears on the statement, the date and time.

19 The second statement was -- it appears was  
20 begun at 7:30 a.m. and was completed, according to the  
21 bottom portion, at 8:30, approximately one hour later.

22 Both statements bear the defendant's  
23 signature as well as Detective Shulman's signature as  
24 well.

25 During the course of this period of time

1 Detective Shulman testified that no threats or force or  
2 promises of leniency were made to the defendant, that  
3 he did not have his weapon with him.

4 According to Detective Shulman, he was the  
5 only one present in the interview room during the  
6 course of these two statements. In both instances,  
7 according to Detective Shulman, the defendant was  
8 offered the opportunity to read the statements after he  
9 wrote them out and asked if he wanted to make any  
10 changes that he could. According to Detective Shulman,  
11 the defendant did not make any changes.

12 Throughout the course of these two statements  
13 Detective Shulman indicated that the defendant at no  
14 time wished to invoke his right to remain silent or to  
15 speak with a lawyer.

16 At one point during the course of the  
17 interview after these statements the defendant was  
18 asked by Detective Shulman if he had any vibrators in  
19 his car. According to the detective, defendant said he  
20 had a body massager in the car and a vibrator in the  
21 house.

22 At that point -- just off the record one  
23 moment.

24 (Discussion held off the record.)

25 THE COURT: According to Detective Shulman,

1 after speaking to the defendant as to his possession of  
2 any vibrators, Detective Shulman indicated that --  
3 Detective Shulman then wrote down -- as opposed to the  
4 two other statements, Detective Shulman then wrote down  
5 his question to the defendant and the defendant's  
6 answer, it's in Detective Shulman's handwriting, in  
7 which the defendant indicated to him that there were  
8 multiple vibrators in the house. They are white and  
9 looked the same, they are in a cabinet in the bedroom  
10 in the house, and he has a white fold-up massager in  
11 the car that he uses for his neck. He claims to have  
12 never have used it on his daughter.

13 That oral conversation was reduced to writing  
14 by Detective Shulman. There's also -- and this is,  
15 again, People's 6 in evidence that was introduced  
16 during the hearing.

17 According to Detective Shulman, the defendant  
18 then drew a picture in his own handwriting of what  
19 appears -- what appeared to Detective Shulman to be the  
20 vibrator that the defendant was referring to in terms  
21 of its dimension and its shape.

22 After this had taken place, according to  
23 Detective Shulman, he then spoke to Police Officer  
24 Alfaro who told her that there was some, what he  
25 believed to be, items of evidence in the home and in

1                   the defendant's car that was pertinent and related to  
2                   this case.

3                   Detective Shulman then contacted the DA's  
4                   Office. He had asked the defendant if he would be  
5                   willing to make a videotaped statement. That statement  
6                   was introduced into evidence as People's Exhibit 7.

7                   The videotaped statement was played for the  
8                   jury. The video -- for the Court. The videotaped  
9                   statement was played for the Court. The videotaped  
10                  statement was taken at the Queens -- at the  
11                  105th Precinct in a different room than that which the  
12                  defendant was -- had been questioned by Detective  
13                  Shulman.

14                  The videotaped statement that was entered  
15                  into evidence both audibly and visually depicted two  
16                  Assistant District Attorneys from Queens, the  
17                  defendant, the videographer and Detective Shulman in  
18                  the -- in this second interview room.

19                  Preliminarily, the defendant's Miranda  
20                  warnings were then administered to him at now a second  
21                  time by one of the Assistant DAs on the videotape.

22                  On the videotape the defendant is clearly  
23                  seen to be acknowledging his Miranda warnings, waiving  
24                  his rights with respect to his Miranda warnings and  
25                  affixing his initials similarly to the way he did in

1 front of -- with Detective Shulman after the  
2 Assistant DA wrote the words yes to each of the six  
3 questions that were posed to him.

4 During the course of the videotaped statement  
5 the defendant did not indicate that he wished to no  
6 longer give a statement or speak to a lawyer or, for  
7 that matter, invoke his right to remain silent. In the  
8 videotaped statement the defendant is shown without  
9 handcuffs in the interview room.

10 After the videotaped statement was played  
11 defendant was then brought -- brought, I should say, for  
12 booking at central booking in Queens.

13 In looking at the videotaped statement it  
14 appeared to be done on the afternoon, late afternoon,  
15 of June 24th, 2008, somewhere between the hours, I  
16 believe, of 4 and 5 in the afternoon. The videotaped  
17 statement is approximately 30 to 40 minutes in length.

18 Detective Alfaro from the 105th precinct  
19 testified that she was -- worked a tour of duty on  
20 June 24th, 2009 from 11:15 to 5:40 p.m. -- 11:15 a.m.  
21 to 5:40 p.m.; that she was asked if she wanted an  
22 arrest -- she was asked by one of her supervisors if  
23 she wanted an arrest, which she agreed to; that  
24 Detective Shulman had then directed her to process the  
25 arrest.

1                   She assisted in the processing of the arrest,  
2                   including the interviewing -- some interviewing of the  
3                   complainant and doing an online booking paperwork.

4                   According to Police Officer Alfaro she took  
5                   the defendant downstairs from the upstairs area where  
6                   defendant had been in the squad room with  
7                   Detective Shulman. He was brought downstairs  
8                   handcuffed where his arrest was processing.

9                   He was then placed in a cell area behind the  
10                  front desk of the 105th Precinct where pedigree  
11                  information was taken from him.

12                  According to Officer Alfaro, her weapon was  
13                  locked in a locked area throughout this time.

14                  During the course of her interaction with the  
15                  defendant, which was now in the early morning or  
16                  mid-morning hours of June 24th, the defendant did not  
17                  make any complaints of pain or request any medical  
18                  attention.

19                  While officer Alfaro was with the defendant  
20                  the defendant did not interact with any other police  
21                  officers she did not see any other police officers go  
22                  into the cell after the defendant was placed in the  
23                  cell by Officer Alfaro.

24                  At one point she was asked by  
25                  Detective Shulman to take the complainant in this case

1 to the vehicle where -- that the defendant had brought  
2 to the 105th Precinct in an effort to secure certain  
3 property that was, according to the defendant, located  
4 in the car. This was an Ecolab truck that the  
5 defendant used for work purposes that was parked next  
6 to the 105th Precinct.

7 According to Officer Alfaro, the complaining  
8 witness took her to a vehicle and directed her to a  
9 compartment inside the vehicle, I believe, where a meat  
10 clever was recovered as well as a white massager.

11 Those items of property were then invoiced  
12 and vouchers were prepared and also Officer Alfaro went  
13 to the defendant's home on June 24th, 2008 where she, I  
14 believe, met the mother of the complainant, the wife of  
15 the defendant, at 242-10 89th Avenue in Queens and  
16 indicated to her to search the home. Officer Alfaro  
17 indicated she had the consent search form which had  
18 previously been signed by defendant with her.

19 She indicated defendant's wife allowed her  
20 inside the home and that a search was done of the  
21 master bedroom in the home that the defendant shared  
22 with his wife and according to Officer Alfaro she  
23 recovered a white and gray massager that was under the  
24 bed in the defendant's master bedroom.

25 The defendant himself testified in this

1 hearing. He indicated that he's 51 years of age,  
2 worked as an Ecolab worker involved in pest  
3 elimination. He testified that he had no injuries  
4 prior to June 24th, 2008. He made reference to a prior  
5 hernia operation.

6 He testified that he had last eaten on June  
7 22nd, 2008, which, I believe, was a Sunday, and worked  
8 the entire day on Monday day and at approximately 1:45  
9 a.m. on June 24th, 2008 he noticed that his daughter  
10 was not -- the complainant in this case was not home,  
11 noticed the back door unlocked, thought that his  
12 daughter had ran away or was missing, drove to the  
13 105th Precinct at approximately 2:30 a.m.

14 He indicated that when he went into the  
15 precinct he was met by an officer and he told that  
16 officer he came to report his daughter was missing.

17 He indicated that nine or ten officers  
18 surrounded him, that they then began to grab him by his  
19 hand or his arm and slammed him into a wall, that  
20 officers were -- surrounding officers were shouting for  
21 another officer to cuff him, put a cuff on him. He  
22 indicated that officers were pushing him, grabbing him,  
23 in essence, physically throwing him around.

24 He indicated at some point that he began to  
25 ask if he could be allowed to have a phone call for his

1                   wife. He was told that he was not going to get a phone  
2                   call, that he was then eventually handcuffed and pushed  
3                   up a flight of stairs by Detective Shulman, taken to a  
4                   location, the interview room that he referred to as the  
5                   box.

6                   He indicated that Detective Shulman  
7                   initially, when entering the room, grabbed him by his  
8                   collar and pushed and pulled him around throughout the  
9                   course of this, using language that he described as  
10                  foul.

11                  He indicated that he was never advised of his  
12                  Miranda rights.

13                  He indicated at one point  
14                  Detective Shulman came in with papers saying that it  
15                  contained statements by his daughter accusing him of  
16                  inappropriate sexual activity.

17                  The detective said, "You want me to tell --  
18                  you want to tell me anything else?"

19                  Defendant requested he wanted to speak to his  
20                  wife and, alternatively, a lawyer. Detective Shulman  
21                  indicated he was not going to get either.

22                  He indicated that the Miranda sheet that's  
23                  been entered into evidence had the words yes already  
24                  written on it, that the detective had made threats for  
25                  him to place initials on it, that the detective came

1 back with the notepad, pen and paper.

2                   The defendant wrote what had occurred at the  
3 fair. He acknowledged writing what occurred at the  
4 fair.

5                   Detective Shulman told him that he was going  
6 to be put away for a long time, made him sign a  
7 confession that he abused his daughter. He told --  
8 according to the defendant, Detective Shulman told him  
9 that he was going to take it to his supervisor and that  
10 once he does that that he would be going home soon.

11                  The defendant also said that the detective  
12 asked him to do a videotape. He said he kept on asking  
13 for a lawyer, was denied access to a lawyer, denied  
14 access to a phone call. He said that after he signed  
15 his Miranda rights for the DA he would then be going  
16 home.

17                  He says he did not, was deprived of sleep  
18 from Sunday through Tuesday afternoon with the  
19 exception of a bottle of water given to him by the DA  
20 during the course of the videotape, that he had nothing  
21 to eat or sleep for approximately 15 hours.

22                  Upon his release from jail after being  
23 arraigned he went to his attorney's office and then  
24 thereafter went to Long Island Jewish Hospital on  
25 June 26th, 2008 for treatment of his injuries.

1                   He introduced photographs in evidence,  
2 People's G through J that he indicates --

3                   MR SCHECHTER: Defendant's G through J. I  
4 think you said People.

5                   THE COURT: Defendant's G through J,  
6 indicating what he described as injuries that were  
7 inflicted -- or healing injuries that were inflicted at  
8 the hands of the police officers at the 105th Precinct  
9 as well as the hospital records from Long Island Jewish  
10 that were entered into evidence in which he complained  
11 of pain, body aches, abdominal pain that he, according  
12 to the records, indicated -- was inflicted at the hands  
13 of the police officers.

14                  I should also indicate that the defendant  
15 also introduced photographs into evidence depicting the  
16 outside of the 105th Precinct, C,D,E and F in evidence,  
17 as well as the interrogation area that was acknowledged  
18 by Detective Shulman as the location where the  
19 interviewing of the defendant took place.

20                  The Court makes the following conclusions of  
21 law:

22                  With respect to the Huntley issues, as I  
23 indicated, the Court does credit the testimony of the  
24 police officers, Detective Shulman in this particular  
25 case.

1                   The Court finds that in the first instance  
2                   that the statements were voluntarily given under oath,  
3                   CPL 60.45, that these statements were voluntarily made,  
4                   that the defendant made a knowing, intelligent and -- a  
5                   knowing, intelligent and voluntary waiver of his  
6                   Miranda rights both prior to giving the written  
7                   statements to the police officer, or the detective, I  
8                   should say.

9                   Court also finds that the People have met  
10                  their burden with respect to the consent searches that  
11                  were executed by the defendant; that based on the  
12                  totality of the circumstances here that these consent  
13                  searches -- or consent forms allowing the search of  
14                  both his vehicle and his home, again, were voluntarily  
15                  made after the defendant was advised orally by  
16                  Detective Shulman of his rights and with respect to  
17                  both of these consent searches, as well as being given  
18                  the opportunity to read both of these consent search  
19                  forms prior to signing them, and therefore the property  
20                  that was recovered, both in the car and the home, as a  
21                  result of these search forms was properly obtained.

22                  Insofar as the statements are concerned,  
23                  Court finds that contrary to the defendant's  
24                  assertions -- primarily when viewing the videotape that  
25                  was seen by the Court in this case, the Court,

1           notwithstanding the defendant's assertions in this  
2           case, would credit the evidence that was presented  
3           during the course of this case to the degree that the  
4           People, in this Court's view, have satisfied beyond a  
5           reasonable doubt that these statements were voluntarily  
6           made and that they were the product of knowing,  
7           intelligent and voluntary waivers of the defendant's  
8           Miranda rights and, accordingly, the defendant's motion  
9           to suppress both the statements -- written statements,  
10          videotaped statements, as well as any other evidence  
11          that was recovered is hereby denied.

12           MR SCHECHTER: Respectfully except.

13           THE COURT: Yes.

14           MR SCHECHTER: Question, your Honor?

15           With respect to the videotape, is the Court  
16          making a determination that the warnings given ab  
17          initio by the detective were the warnings that were  
18          allocable, the Miranda warnings, allocable to my  
19          client's statement or is the Court determining that the  
20          verbal warnings given by, I believe, either the  
21          District Attorney at the video statement, that those  
22          were, in fact, the proper Miranda warnings because no  
23          waiver -- notwithstanding a waiver form was signed on  
24          the videotape, there was none that was put into  
25          evidence.

1                   So I would like to know which Miranda waiver  
2                   the Court is determining with respect to the videotape  
3                   and its admissibility.

4                   THE COURT: Well, at a minimum, I think that  
5                   the Miranda warning that was executed by the defendant  
6                   during his interaction with Detective Shulman clearly  
7                   applied not only to the written statements, but later  
8                   to the videotaped statement.

9                   There was no evidence in the record to  
10                  suggest that there was any invocation by your client or  
11                  by the defendant of his right to remain silent or his  
12                  right to speak with an attorney at any point in time  
13                  during the course of his interaction with the police.  
14                  Although the -- and I would say that applies to the  
15                  videotaped statement as well.

16                  I would just also add that I think an  
17                  inference secondarily could be drawn from the  
18                  videotaped statement that it would appear from --  
19                  although the form wasn't introduced, that the defendant  
20                  was advised of his Miranda warnings a second time  
21                  during the course of that videotape and that clearly in  
22                  that instance he also made an intelligent, knowing and  
23                  voluntary waiver of his rights during the prior --  
24                  immediately prior to the videotape.

25                  MR SCHECHTER: The oral administration of the

1 rights.

2 THE COURT: Yes.

3 All right, obviously I went a little bit  
4 longer than I anticipated. I'm going to ask everybody  
5 to come back at 2:30. I would ask you to come here. I  
6 don't even know, as I sit here now, whether or not --  
7 we can't be here to begin jury selection. We're going  
8 to have to be somewhere else. I don't know where that  
9 is.

10 THE CLERK: Judge Sullivan.

11 THE COURT: My clerk is telling me we're  
12 going to be right down the hall in Judge Sullivan.  
13 He's on the courtroom on the left. Report there at  
14 2:30.

15 MR SCHECHTER: Should we leave our stuff or  
16 take it?

17 THE COURT: Take it. We won't be here this  
18 afternoon.

19 MS. JOHNSON: I'll have a witness list at  
20 2 o'clock for the prospective panel.

21 (The luncheon recess was taken at this time.)

22 \* \* \* \*

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## I N D E X

2

DIRECT    CROSS    REDIRECT    RECROSS

3

People's Witnesses:

4

1.	Det. Leonard Schulman	22/ 96	175/ 255	230	231
2.	P.O. Celica Alfaro	239	252	272	272

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7

Defendant's Witnesses:

8

1.	Harold Gopaul	276	305	338
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## E X H I B I T S

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FOR IDENTIFICATIONIN EVIDENCE

13

People's Exhibits:

14

1.	Miranda warnings	33	36
2.	Consent to search home	45	47
3.	Consent to search vehicle	49	51
4.	Defendant's statement (6:30)	58	99
5.	Defendant's statement (8:30)	109	112
6.	Defendant's statement	115	124
6A.	Original of Exhibit 6	117	
7.	Videotaped statement	117	132

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19

Defendant's Exhibits:

20

A.	Memo book (Alfaro)	183	
B.	Follow-up index sheet	185	187
C.	Photo	198	200
D.	Photo	198	200
E.	Photo	198	200
F.	Photo	198	200
G.	Photo	299	301
H.	Photo	299	301
I.	Photo	299	301
J.	Photo	299	301
K.	LIJH records	304	305

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